No. 2,462

UNITED STATES CIRCUIT COURT.

Sixth Judicial Circuit, Middle District of Tennessee.

IN EQUITY.

Calvin Amory Stevens, on behalf the Holders of Internal Improvement Bonds of Tennessee, issued to the Louisville and Nashville Railroad Company,

versus

The Louisville and Nashville Railroad Co.

ANSWER.

RUSSELL HOUSTON,
SMITH & ALLISON, and
ED. BAXTER,
Solicitors, and of Counsel for Respondents.

No. 2,462.

THE ANSWER OF THE LOUISVILLE & NASHVILLE RAILROAD COMPANY (SUED BY THE NAME OF THE LOUISVILLE AND NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY), DEFENDANTS, TO THE BILL OF COMPLAINT FILED BY CALVIN AMORY STEVENS IN THE UNITED STATES CIRCUIT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, IN EQUITY, NO. 2,462 ON THE RULE DOCKET OF SAID COURT.

These defendants now, and at all times hereafter, saving to themselves all manner of benefit, or advantage of exception, or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof, as these defendants are advised it is material to make answer to, answering, say:

They admit that the Louisville & Nashville Railroad Company are a body politic and corporate, chartered by acts of the General Assembly of the Commonwealth of Kentucky. The right of way to construct their railroad from the line between the States of Kentucky and Tennessee to Nashville was granted them by acts of the General Assembly of Tennessee; but they have never been incorporated by said State, and therefore are not citizens of it, but of the State of Kentucky.

They admit that the object and purpose of the creation of said corporation by the said charters, was the construction, completion, and thereafter the operation and management, among others, of a line of railway for the transportation of passengers and

freight, from the city of Louisville in the State of Kentucky to the city of Nashville in the State of Tennessee. For this purpose such powers were granted to said corporation as are declared in the several charters and acts of incorporation of Kentucky, and acts giving it a right of way and to transact business in the State of Tennessee. The said corporation was authorized to borrow money for the purposes of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for and insure the payments of its liabilities.

Respondents deny that the Louisville & Nashville Railroad Company were incorporated by an act passed by the Legislature of Tennessee in 1851, or at any other time; and they also deny that their corporate name has ever been changed by statute, or otherwise, to the "Louisville, Nashville and Great Southern Railroad Company. The words "Great Southern" are no part of their corporate name, but are a part of the name of a system of roads controlled by them through purchase, lease or consolidation, by which system the original Louisville and Nashville Railroad is a part.

Respondents have not been furnished with a copy of Exhibit A to the bill, which is said to contain several charters and acts, with their several amendments, passed by the Legislature of Tennessee relative to said corporation; therefore they can neither admit nor deny their correctness, and they demand strict proof thereof, so far as the same may be material.

Respondents admit that the General Assembly of the State of Tennessee, by an act passed February 11, 1852 (ch. 151, p. 204, of Pamphlet Acts 1851-2), entitled "An Act to establish a system of internal improvements in this State," determined to lend to to the railroad companies within its limits, and

specified in said act, "the coupon bonds of the State of Tennessee" "for procuring the iron rails, chairs, spikes, and equipments," "and for putting down said iron rails" upon the several lines of railway. The plan of that legislation was, that each railroad company should procure *bona fide* subscriptions for its capital stock to an amount sufficient to grade, bridge, and prepare for the iron rails the whole extent of its main trunk line, and should grade, bridge, and have ready the necessary timbers for the reception of rails, and fully prepared a section of thirty miles of said road at either terminus, in a good substantial manner, with good materials, for putting on the iron rails and equipments. The Governor of the State was to be notified, and satisfied, of these facts, and that said section, or any part thereof, was not subject to any lien whatever, other than those created *in favor of the State* by the acts of 1851-2. By means of these preliminary requirements, it was thought that assurance was obtained that each railroad company would be competent to fulfill the obligations it was to incur under said statute. No road was to be entitled to State aid under said act unless it should, within four years, complete at least one section of thirty miles, or the whole length of its road if less than thirty miles long. The Governor of the State was to "issue to said company coupon bonds of the State of Tennessee to an amount not exceeding eight thousand dollars per mile on said section." The bonds were "not to be used for any other purpose than for procuring the iron rails, chairs, spikes, and equipments for said section, and for putting down said iron rails," and the Governor was authorized to "appoint a commissioner to act, under oath, in conjunction with the president of the company," in negotiating said bonds for the purposes aforesaid, and in any other

matters pertaining to said company where *the interest of the State*, in the opinion of the Governor, required it. The act was made a public law, for all purposes of notice. The act itself did not adopt any system of numbering for distinguishing each bond, or identifying the company to which it was issued, nor did said act authorize any officer or other person to adopt any such system. Another act of the same session (1851–2), passed February 21, 1852 (Acts 1851–2, p. 222), did provide, that the bonds which might be issued "under the acts of the (then) *present* General Assembly, as a loan to internal improvement companies, should be numbered by the Secretary of State, who, upon delivering said bonds to the company, should take a receipt, reciting the number, date, and amount of said bonds, in a well bound book, to be deposited in his office. Such receipts were doubtless taken, and kept in said office, and from them *the State* could at any time identify the bonds which had been loaned to each of the railroad companies; but there was nothing upon any of the bonds by which the purchaser could tell to what company they had been loaned. As a matter of fact, the purchasers of said bonds did not know, when they purchased the same, to what companies they had been issued, for the information contained in the receipts taken by the Secretary of State, as to the bonds loaned before the late war, was never made public until 1875, and then only in a report made by John C. Burch, Comptroller; and the information relative to the bonds loaned after the war, was not made public until October. 1869, and then only in a report made by G. W. Blackburn, Comptroller. The general law of Tennessee, Code, sec. 209, requires the Comptroller to register the number and date of *all* State bonds, showing for what purpose and to whom issued. The act of February 21, 1852, re-

quiring the registry of the bonds loaned to railroads, simply placed them on the same footing with the other bonds of the State, and therefore has no special significance.

Respondents deny that by the tenor of the act which gave existence to the bonds, each company became liable upon, or bound to perform, the obligations contained therein, or represented by, the bonds loaned to it. On the contrary, the company was not liable *upon the bonds* at all; its name does not in any way appear, either in or upon the bond, either as maker, surety, guarantor, or endorser. The only "obligations contained in or represented *by the bond*" is the obligation of the *State of Tennessee* to pay the holder of the principal and interest due thereon as the same matures—an obligation with which the company had nothing to do. If complainant's construction were correct, the bonds loaned by the State to the best railroads would have commanded a higher price than the bonds loaned to inferior roads; but, as a fact, there has never been the slightest difference in the market price between the bonds issued to most important roads and those issued to the most unimportant ones. To illustrate: The Louisville and Nashville Railroad Company have always met promptly their bonded obligations at maturity, while the Edgefield and Kentucky Railroad Company defaulted before the war on the interest due from them to the State, and has never since paid any part thereof; their road was afterwards sold, as an insolvent road, by proceedings in the Chancery Court at Nashville, instituted by the State of Tennessee to enforce its lien for bonds loaned to said company. The State has been in default ever since July 1, 1875, upon the interest upon all of her bonded debt, and yet there is, to-day, no difference in price, in the New York market, between the

State bonds loaned to the Louisville and Nashville Railroad Company and those loaned to the Edgefiel and Kentucky Railroad Company. This would not be, if it had ever been really believed that the Louisville and Nashville Railroad Company were "liable upon, and bound to perform the obligations contained in and represented by," the bonds loaned to them. The truth is, the holders of Tennessee bonds never had any idea as to what bonds had been loaned to the different railroad companies, until the reports of Burch and Blackburn were published : even then, it was never pretended that the companies were liable to the bondholders, until it was feared the State would repudiate, and even now this after-thought liability has not impressed the financial market enough to create any appreciable difference between the prices of bonds loaned to solvent and those loaned to insolvent roads.

Respondents deny that each company was to pay from its own means the interest upon the bonds loaned to it, as the same matured from time to time ; on the contrary, it was made "the duty of the Company to deposit in the Bank of Tennessee, the fiscal agent of the State, fifteen days *before the interest becomes due*, from time to time," an amount *sufficient to pay* such interest, with the exchange, and commissions, and it was contemplated that when the interest did mature fifteen days thereafter, it should be paid by the bank, as fiscal agent *of the State.*

Respondents deny that "each company was to pay and discharge the principal debt, as it was expressed upon said bonds, when same matured"; on the contrary, the bonds had thirty or forty years to run before maturity, and the act required each company, at the end of five years after the completion of its road, to set apart one per cent upon the

amount of bonds issued to the company, and use the same in the purchase of bonds (*i. e.*, any bonds) of the State of Tennessee, which bonds were to be *paid* by the company into the treasury of the State, after assigning them to the Governor. The Governor was to give the company a receipt for them, and, as between the State and the company, the bonds so paid in were to be a credit on the bonds issued to the company. The bonds so paid in, with the accruing interest thereon, were "to be held and *used by the State* as a sinking fund for the payment of the bonds issued to the company." This fund was to be used for the payment of the bonds, and *the State* was to use it for that purpose. If any of the bonds so purchased had been issued to the company purchasing them, which fact could be ascertained by the State from the receipts in the office of the Secretary of State, they were to be not only credited to the company on its debt to the State, but being assigned to the Governor of the State, were to be treated as paid by the State, and cancelled; if, however, any of the bonds so purchased had been issued to any other company, though they were passed as a credit to the company paying them in, as between that company and the State and the company to whom they were issued, but were to be held by the State as a debt against such company; nor were they to be a credit as between the State and the holders of the bonds loaned to the company paying them in.

Respondents admit that the bonds were to be made payable at such places in the United States as the president of the company might designate, and that the sale of said bonds was to be the means of raising the money requisite for "procuring the iron rails. chairs, spikes and equipments for said road, and for putting down said iron rails."

It is also true that the expression does occur in said statute, "that so soon as the bonds of the State shall have been *issued* for the first section of the road as aforesaid, they shall constitute a lien upon said section so prepared as aforesaid;" "and the *State of Tennessee* upon the *issuance* of said bonds, and by virtue of the same, shall be invested with said lien or mortgage without a deed from the company for the payment by said company of said bonds, with interest thereon, as the same becomes due." And when said company should have prepared a second section, or any additional number of sections of twenty miles each, the Governor was to issue to said company like number of bonds of the State, to an equal amount per mile, and "upon *the issuance* of the said bonds the *State of Tennessee* was to be invested with a like mortgage or lien, without a deed from said company, upon said stock, and upon said first and additional section or sections;" "and when the whole of said road should have been completed, the *State of Tennessee* was to be invested with a lien, without a deed from the company, upon the entire road," &c., "for the payment of all said bonds issued to the company, AS PROVIDED IN THIS ACT, and for the interest accruing on said bonds."

This statutory lien was to be operative *at once*, and without any conveyance or assurance of any kind from the corporations, and was to be superior to all liens upon the entire property of any corporation receiving such public assistance in the State of Tennessee. The statute was to be a substitute for a mortgage executed by each railroad company for the purposes named in the act.

Respondents submit, that, taken in their strictest sense against the railroad companies, the words of the act quoted above only give a lien for the payment by the companies of the bonds and interest

"*as provided in the act*," and the only mode *therein provided* is the one stated above, viz., that each company should pay to the fiscal agent, or bank of the State, fifteen days before the interest becomes due to the bondholder, an "*amount sufficient to pay such interest*, with exchange and commissions; and every year, after the expiration of five years from the completion of its road, invest one per cent upon the amount of the bonds issued to it, in bonds of the State, and "*pay*" the same into the treasury of the State "as a credit on the bonds issued to such company." The lien, instead of being for the payment of the bonds and interest by the company to the bondholder, is for the payment *to the State*, by the company, of the debt created in favor of the State, against the company, by the loan of the State bonds. It is called the "lien *of the State*" throughout the act, and all amendatory acts; the interest sought to be protected is called the "interest *of the State*" throughout the act and all amendatory acts; no mention is anywhere made of the bondholder, and no attention is paid to his rights or interests. The lien certainly attached upon the first section of the road "as soon" as the bonds were *issued*. Now, if the bonds for the first section were negotiated as soon as issued, the lien would, according to complainant's theory, immediately enure to the benefit of the purchasers of those bonds, who would thereby be entitled to a first mortgage upon that section, which being a terminal section, would naturally be more valuable than other sections in the middle of the line; but according to the provisions of the statute, when the bonds are issued for the second or subsequent sections, which might not be for several years after the bonds for the first section had been issued, the purchasers of the bonds issued for the subsequent sections would be entitled to displace, *pro tanto*,

the prior lien of the holders of the bonds issued for the first section, and share with them the lien upon that section. This anamoly is avoided by taking respondent's construction; for, if the lien belongs to the State alone, there is no conflict between the lien which she acquires upon the issuance of the bonds to the first section, and those which she acquires upon the issuance of the bonds to the subsequent sections; it is then but one lien, extending itself to the different sections as fast as completed, and covering the entire road as soon as it is finished. It is a lien in favor of *the State* to protect the *State's* interest, in each and every section, and in the road as an entirety; and it is a lien to secure the payment by the companies of the debt created by the loan to them of the State's bonds—the payment to be made "*as provided in the act*"—which requires such payment both as to interest and principal to be made by the companies to the State, before the debt is due from the State to the bondholders, as evidenced by the bonds and coupons.

Again, if the lien is to secure the State for the debt due to the State from the companies for the loan of the bonds, it is proper that such lien should have attached "so soon" as the bonds were *issu d*, and that the State should have been invested with said lien by virtue of such *issuance*. In that view the bonds might be said upon their *issuance* to "constitute," *i. e.*, *create*, a lien in favor of the *State*. But the bonds themselves could not be a lien, and they could not "constitute" or create a lien in favor of the purchaser or holder until they were negotiated by the company. To put an actual case before the court: The Tennessee and Alabama Railroad Company received from the State three hundred bonds in July and September 1854. The English merchants who sold them iron failed to deliver it according to contract, and the company

refused to pay them, but they reserved one hundred and forty-three of the bonds until the dispute could be settled, and they continued in the company's possession until after August, 1855. On the 30th of June, 1859, said company had on hand 389 State bonds, 301 of which were issued as early as June 4, 1858. On June 30, 1860, said company had on hand 303 State bonds, 201 of which had been issued as early as June 4th, 1858. Many other instances of a similar kind could be given where the various railroad companies preferred to use their other means in ironing and equipping the first part of their roads, reserving their State bonds for future uses; but all parties agreed that the debt from the companies to the State arose as soon as the bonds were issued, and the companies paid the State the interest as well on their bonds which were reserved, as upon those which were negotiated. According to complainant's theory, however, the lien belonged to the holders of the bonds, and these companies, as such holders, had a lien upon their own property to secure the payment by themselves, to themselves, of the bonds then in their own possession.

Again, under the general laws of Tennessee then, and now, in force, all mortgages and deeds of trust must be in writing and duly registered, or they are null and void as to existing or subsequent creditors of the makers. Code Tenn., secs. 2030, 2075.

The Constitution of Tennessee ordains that the Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals, inconsistent with the general laws of the land. Art. XI, sec. 8.

If the lien or mortgage upon the railroads belongs, as complainant contends, to the individuals who hold the bonds, the act of Feb. 11, 1852, would

be unconstitutional, as suspending in their favor the general registry law, for this act of Feb. 11, 1852, provides that the lien shall exist without any deed from the company, and have priority without registration over all other claims against the company. But if, as respondents insist, the lien belonged exclusively to the State, the act aforesaid would be valid, as the State is not subject to the constitutional inhibition referred to above.

Respondents deny that the lien upon the railroads was reserved to "insure a sale or make a market for the bonds of the State;" they deny that it was done to create confidence in the public, or on the part of persons to whom said bonds might be offered for sale, or who might become the purchasers thereof, or as an assurance that each company would punctually pay the principal and interest of the bonds loaned to it.

1852 the taxable property of Tennesseewas $177,-420,305. The debt of the State then amounted to only $3,992,856.66, and the rate of State tax was only 11½ cents on the $100. The six per cent. bonds of the State were, as respondents are informed, at par, and she had never defaulted upon any of her obligations. Her credit in the money market needed no liens or mortgages to support it. As conclusive evidence of this fact, and of the fact that the purchasers of the bonds loaned to railroads did not look to the lien as an element of value, it will be shown upon the hearing that there was no difference in the money market between price of the bonds loaned to railroads and those issued by the State to raise the capital of the Bank of Tennessee, or to build her State-house; to secure which there was no pretence of lien or anything. Nor was there any difference in price between the bonds loand to the most valuable railroads and those loaned to the most worthless. All State bonds

stood alike, and alone upon the faith and credit of a sovereign State, whose financial honor up to that time, and in fact down to the late war, had been without a blemish.

Respondents deny that the copy of the internal improvement law as set out in the bill is either true or full; many errors and omissions have been detected by comparison with the original, and the same may be said of the portion of the act of Feb. 21, 1852, which purports to be copied into the bill.

Respondents admit that the State of Tennessee, by act of its General Assembly passed Feb. 8, 1854, (Acts 1853-4, p. 205,) increased the amount of bonds to be issued to the railroad companies from $8,000 to $10,000 per mile; and provision was made for the issuance to them of similar bonds, to aid them in building bridges over certain large rivers. Said act was amendatory of the act of Feb. 11, 1852, to establish a system of internal improvements in the State, and required that the increased amount of bonds should be issued "upon the terms and conditions mentioned in the act which it was intended to amend." The bridge aid bonds were to be issued upon the terms and conditions mentioned (except the second section) in an act passed Feb. 4, 1852 (Acts 1851-2, p. 110), entitled "An act to aid in the completion of the East Tennessee and Georgia Railroad," and also in the fifth and sixth sections of an act passed Feb. 26, 1852 (Acts 1851-2, p. 336), entitled "An act to charter the Chattanooga, Blue Spring and Cleveland Railroad Company." The third section of Feb. 4, 1852, provides that upon the issuance of said bonds the said railroad and bridge, with all the appurtenances, etc., and the interest of the stockholders therein, and the tolls, issues and profits, should be, by force of said act, vested in the State, "*for the security of*

the State against the payment of the bonds issued under said act and the interest thereon," and the State was vested with the right upon the issuance of said bonds to have and hold the entire road and bridge, with their appurtenances, and the tolls, issues and profits of the stock, "*for the security of the payment of said bonds and the interest thereon accruing,*" as a mortgage to secure the payment of the same, "*and said road and all its appurtenances of every kind and description shall be subject to any law that has been or may hereafter be passed for the enforcement of mortgages in like cases.*"

To explain what was meant by the words, "*for the security of the State against the payment of bonds and the interest thereon,*" it will be seen that the second section of said act authorized said company to charge passengers ten cents each for crossing the bridge, in addition to the regular charges; the company was required to render a monthly account of said bridge tolls, and pay over the said sum monthly into some bank in Knoxville, taking the receipt of the bank therefor, "and the sum so deposited in bank shall at all times be *subject to the check of the Comptroller of the Treasury for the payment of the interest on said bonds*, and any overplus after the payment of the interest on said bonds *shall be passed to the credit of the company in discharge of the principal* due on any one or more of said bonds," and "*as soon as the interest and principal of said bonds shall be paid* the said company shall be released from the exaction of said additional charge." It is clear that the "security of the State against the payment of said bonds and interest" was to be attained not by the company paying them to the holders of the bonds, but by paying into the bank money enough to enable *the State* to pay them, which money was to be subject to the check of the State's Comptroller, and

it was possible that the tolls from the bridge would pay the State the full amount of the bonds loaned, long before the bonds themselves were due from the State to the holders thereof.

Respondents admit that by an act passed February 17, 1854, the length of the sections, which it was necessary for the railroads to complete before obtaining bonds of the State was decreased from twenty to ten miles after the completion of the first section of thirty miles. (See Acts 1853–4, p 396.)

It is true that by act passed January 19, 1855, (Acts 1855–6, p. 63), the foregoing act was amended so that the grading only of ten mile sections was required in lieu of the completion of said sections. The act of October 29, 1855 (Acts 1855–6, p. 18), was amendatory of the bridge law above mentioned, but has no general application.

Respondents admit that exhibit B to the bill gives correct copies of said acts of February 8 and 14, 1854, and January 19, 1855, but it gives no copy of act of October 29, 1855.

Respondents admit that there was delivered to the Louisville & Nashville Railroad Company, on account of its railroad, and a joint road and bridge across Cumberland river, various internal improvement bonds of the State of Tennessee; respondents kept no record of the numbers, dates, or series of the bonds issued to them, and have no knowledge, information, remembrance, or belief in regard thereto. They cannot admit, and demand proof that the bonds described in the bill were the identical bonds issued to them.

Respondents suppose that exhibit C. to the bill is a substantially correct copy of the State bonds and coupons that were loaned to the railroads under the act recited therein. Said bonds, to the amount of $560,500, were received by, or on behalf of the Louisville & Nashville Railroad Com-

pany, through properly appointed officers, and were, by said company, negotiated and sold, in pursuance of law, to *bona fide* holders, but none were received prior to April 30, 1858. The proceeds of these bonds were applied as directed by the laws under which they were loaned to respondents, who have succeeded in earning an amount sufficient to discharge and pay their debt to the State for the interest and principal of said bonds. Respondents have no knowledge, information, or belief as to how many of said bonds are now outstanding, nor in whose hands any of them are, nor as to whether complainant is the owner or holder of any of them, nor as to whether complainant is the holder of any coupons attached to any of said bonds, nor as to when any of said coupons may have matured, nor what they amount to. Neither do respondents know how numerous the holders of said bonds are, nor where they reside. Upon all these points, so far as material, respondents demand strict proof.

Respondents deny that they have failed to comply with the provisions of the general internal improvement law above referred to, though it may be that installments of interest on complainant's bonds and on bonds of other holders in like situation, and the coupons evidencing such interest, have not been paid by respondents nor by the State of Tennessee to the holders thereof. The law above referred to did not make it any part of the respondents' duty to pay such interest to the holders of said coupons. Respondents admit that the State of Tennessee has been in default on the interest upon all of her bonds since January 1, 1876. Respondents deny that complainant is entitled to the enforcement of any lien, or to the appointment of a receiver, upon or over any of respondents' property, for the purposes described in said statute, or for any other purpose whatever.

Respondents admit that by the fifth section of said act of February 11, 1852, it is provided that if any company, to whom the bonds of the State have been loaned, shall fail to deposit in the Bank of Tennessee, at least fourteen days before the interest becomes due, from time to time, upon said bonds, an amount sufficient to pay such interest, including exchange and necessary commissions, or satisfactory evidence that said interest has been paid, or provided for, it shall be the duty of the Comptroller to report that fact to the Governor, and the Governor shall immediately appoint some suitable person or persons to take possession and control of said railroad, and all the assets thereof, and manage the same, and receive the rents, issues, profits, and dividends thereof, whose duty it shall be to give bond and security *to the State of Tennessee*, in such penalty *as the Governor* may require, for the faithful discharge of his or their duty as receiver or receivers, to receive said rents, issues, profits, and dividends, and pay over the same *under the direction of the Governor, toward* the liquidation of such unpaid interest. And said receiver shall continue in possession of said road, fixtures, and equipments, and run the same, and manage the entire road, until a sufficient sum shall be realized, exclusive of costs and expenses incident to said proceedings, to pay off and discharge the interest as aforesaid, due on said bonds, which being done the receiver shall surrender said road and fixtures and equipments to said company. The Comptroller shall, from time, settle the accounts with the receiver, and the "*balances*," (erroneously printed and enrolled as "balance") shall be *deposited in the treasury of this State*. The Comptroller is authorized, and it is made his duty, upon his warrant to draw *from the treasury* any sum of money necessary to meet the interest on such bonds, as may not be provided by

the company *as provided for in this act*, and the Comptroller shall make a report thereof to the General Assembly from time to time.

As shown above, the interest which the statue intended to protect was the "interest *of the State*," and will be seen from the section just quoted that the receiver is to be appointed upon the report of the Comptroller *of the State*, by the Governor *of the State*; is to give his bond *to the State*, is to make his payment "*towards*" the liquidation of the unpaid interest under the direction of the Governor *of the State*, is to settle his accounts with the Comptroller *of the State*, end pay all the balances into the treasury *of the State*. The rights now claimed for the bondholders are not noticed, and evidently were not then supposed to exist; but if, as complainant insists, the rights of the bondholders are to be worked out through the State, then respondents submit that complainant must apply to the Governor of the State, and not to this Court, for a Receiver, and that the remedy pointed out in said act is exclusive. Respondents are at a loss to know why complainant has stated in his bill that the officials of the State of Tennessee named in said act for the execution of the duties pertaining to the statutory receivership, to-wit: the Comptroller and the Governor, claim to be bound by the subsequent acts of the General Assembly of Tennessee, passed in the years 1869 and 1870, and therefore that complainant is unable to obtain the action of said officials, or of the State of Tennessee. If said acts are constitutional, then complainant has no right to a receiver, either from the Governor or from this Court; but if said acts are not constitutional, it would be the Governor's duty to disregard them, and he would certainly do so if convinced that such was the case. At all events, the complainant cannot put the Governor

nor the State in the wrong until he has first made a demand upon them to act. Respondents are informed, and so charge, that no demand or request has ever been made by complainant upon the Governor for the appointment of a Receiver, and respondents rely upon this defense to so much of the bill as prays for a Receiver, as fully as though it were specially pleaded. Respondents do not "pretend," though they certainly do claim, that the lien reserved by the aforesaid act of February 11, 1852, upon their property, by the State, is satisfied and discharged, and that they are absolved from all obligations which they assumed by the acceptance from the State, and the use of the bonds loaned them by the State, and this they claim, though it may be made to appear that some of such bonds have found their way into complainant's hands, and the interest due thereon from the State may not have been paid. Respondents base this claim upon the following state of facts: As shown above, the act of February 11, 1852, by its fifth section, required each company to pay into the Bank of Tennessee, fifteen days before the interest became due, an amount sufficient to pay such interest, with exchange and commissions, and in default thereof the Governor was authorized to appoint a Receiver. Under the seventh section each company was required, five years after its road was *completed*, to set apart annually *one* per cent. upon the amount of the bonds loaned to it, and use the same in purchasing bonds of the State of Tennessee, which the company was to *pay* into the treasury of the State, after assigning them to the Governor, who was to give the company a receipt therefor, and the bonds so paid were to be a credit, as between the State and the company paying them, upon the bonds loaned by the State to such company. If any of the bonds so paid in had been issued to

the company paying them, they were to be not only credited to that company, but cancelled; if they had been issued for any other purpose they were to be held and used *by the State* as a sinking fund for the payment of the bonds issued to the company paying them in. It was calculated that by compounding the interest on said fund semi-annually, it would raise an amount sufficient to pay the bonds before they fell due from the State to the holder. If, however, these annual payments were not made by the company, *and in consequence thereof* said company should "fail or refuse to pay any of said bonds when they fall due," the Governor was to notify the Attorney General, who was required to file a bill against said company *in the name of the State*, and thereupon the court should make all such orders and decrees in said cause as might be deemed necessary by the court to "secure" (erroneously printed "receive") payment of said bonds with the interest thereon, and to indemnify the State of Tennessee against any loss on account of the issuance of said bonds, by ordering said railroad to be placed in the hands of a receiver, ordering the sale of the said road, and all the property and assets attached thereto, or belonging to said Company, or in such other manner as the court may deem best for the interest of the State.

By the 12th section, the State of Tennessee expressly reserved the right to enact by the Legislature thereof, thereafter, all such laws as might be deemed necessary to protect the *interest of the State*, and to secure the State against any loss in consequence of the issuance of bonds under the provisions of said act, but in such a manner as not to impair the vested rights of the *stockholders* of the companies,

Itwill be noticed that the only mode "*provided in the act*" of February 11, 1852, "for the payment

by said companies of said bonds with interest thereon," was by paying the interest into the Bank of Tennessee in advance of the maturity of the coupons, and by paying the principal by annual installments into the treasury of the State. But while the State, under the 5th section, could appoint a Reciver upon the first default on the *interest*, she failed to reserve the right to appoint a Receiver, or make a sale for default, in the annual payments which were intended to discharge the *principal* of the debts due from the companies to the State for the loan of the bonds. The Receiver and sale provided for in the 6th section could not be resorted to until the bonds loaned to the compnies had fully matured. To remedy these and other defects, the General Assembly, under the power reserved by the 12th section of the act aforesaid, on February 21, 1856 (Acts 1855-6, pp. 144, 145, secs. 5, 6), passed an act requiring all railroad companies who had received, or might thereafter receive, bonds of the State under the act of February 11, 1852, to set apart annually *two* per cent. upon the amount of the bonds loaned them, instead of one per cent. as previously required; they were to commence this five years after they received the bonds, instead of five years after the completion of the roads, as previously required; instead of allowing the companies to use this fund themselves in the purchase of State bonds, as the first act had permitted them to do, they were now required to pay it over to the Treasurer, and the Governor, Comptroller, and President of the Bank of Tennessee, as a board of sinking fund commissioners, were to invest it in bonds of the State (i. e., *any* bonds they might see proper to select), and the interest upon said bonds was to be reinvested in like securities. Of course, after this act deprived the companies of the right to use their annual payments in the purchase of bonds, it was

impossible for them to purchase the bonds originally issued to them, even if they had known where to find them. The act of February 21, 1856, further provided that if the companies failed or refused to make the annual payments of two per cent, the Attorney General should immediately file a bill for a receiver and sale, as provided by the 6th section of the act of February 11, 1852, but without waiting, as therein required, for the final maturity of the bonds.

The Comptroller's reports show that the sinking fund commissioners credited each railroad company with the annual amounts paid in, but in their investment thereof selected *any* bonds of the State that were offered for sale, Thus, from the Comptroller's report of 1859, p. 59, it seems that the Tennessee & Alabama R. R. Co. paid to the Treasurer $6,400, which was invested in one bond *endorsed* by the State for the East Tennessee & Georgia R. R. Co., four State 5¼ per cent bonds, and three 5 per cent bonds; but for what purpose the last seven bonds were issued is unkown. Not one of the bonds purchased with the money paid in by that company had ever been issued to it. The idea of the State at that time was to pay the interest on all the bonds that were paid into the railroad sinking fund, and the accumulation would be so rapid as to certainly raise a fund that would pay the bonds by their maturity. In the Comptroller's report for 1859, p. 60, he states that $82,840.65, paid in by the railroad therein named, invested with accruing interest, had purchased bonds amounting to $109,750, which paid an annual interest of $6,417.50, or 7¾ per cent on the investment. The idea is expressed in section 8 of an act passed February 20, 1856 (Acts 1855-6, p. 478), entitled "An Act for the Benefit of the Rogersville and Jefferson Railroad." It requires said company to

pay into the treasury two per cent per annum on the whole amount of the bonds issued to said road, "as a sinking fund to be invested and reinvested in State bonds, or other stocks, as provided by law, for the purpose of liquidating and paying off said bonds as they fall due."

The same idea is carried out in the act of February 18, 1856 (Acts 1855-6, p. 106, sec. 8), amending an act establishing a State Agricultural Bureau. The State loaned said Bureau $30,000 of six per cent coupon bonds to enable the Bureau to purchase permanent fair grounds, and to erect building near Nashville. This loan was made to encourage the agricultural interests of the State, *and no lien was retained on the property purchased.* But the Bureau was required to make interest payments into the Bank of Tennessee, and payments upon the principal annually into the sinking fund, which was to be used *by the State* for the payment of the bonds loaned to the Bureau in precisely the same way that was provided by the act of February 11, 1852, in regard to railroads where a lien in favor of the State was retained.

On the 20th of March 1860 (Acts 1859-60, p. 90), the policy of the State was changed in some respects. This act directs that the money or bonds that had theretofore been paid by the railroad companies to the sinking fund commissioners, together with the accruing interest thereon, should be passed directly to the credit of the party paying the same, and "be a release to said party for that amount on the debt due by them to the State of Tennessee." Said bonds were all to be cancelled, and if they were bonds "issued" (as distinguished from "endorsed") by the State, they were to be filed in the office of Secretary of State. On and after January 1, 1860, all railroad companies who had received bonds of the State, were required to pay 2½ per

cent. annually on the amount of bonds issued to them, as a sinking fund. These payments could be made in cash, or in "like character" of bonds that may have been issued, or endorsed, by the State for said company at their face or par value. The State had *loaned* her own bonds to some of her internal improvement companies; she had *endorsed* the bonds of some of the other companies, and had *issued* her own bonds to pay for her State House, and for other purposes. The result was, she had several different series of bonds issued under different laws, and maturing at different times. Series A. were five per cent. bonds, issued under act of 1838, maturing in thirty years; they were issued principally to pay for stock subscribed by the State in various turnpikes and railroads, and aggregated $1,893,000. Series B. were known as "white bonds, 6 per cent., issued under the act of February 11, 1852." Numbers 1 to 7,908 of this series mature in 1892, while numbers 7,909 to 11,806 do not mature until 1898. This series aggregated $11,806,000. Series C. were also known as "white bond, six per cent., issued under the act of February 11, 1852, and due in 1898." This series aggregated $1,878,000. Series B. and C. represented the State bonds loaned to the various railroad companies under said act of February 11, 1852, before the war, and were all of "like character" with each other, except that all of series C. mature in 1898, while some of series B. mature in 1898, and others in 1892. (See Comptroller's report, 1879, p. 130, *et seq.*) The sinking fund commissioners did not construe the act of March 20, 1860, as meaning by the words "like character" that the bonds must have been identical bonds loaned to the company paying them; on the contrary they received from them any State bonds of like maturity, etc. To illustrate, the E. T. & Va. R. R. Co. paid in "fifteen of their own en-

dorsed bonds," and "two regular State bonds;" the Memphis & Charleston R. R. Co. paid in "sixteen State bonds" and $2,960 in cash; the Memphis & Ohio R. R. Co. paid in "six State bonds; and so of the McMinnville & Manchester R. R., and the Tennessee & Alabama R. R. Co. (See Comptroller's report, 1861, pp. 54, 55.)

Said act of March 20, 1860, further provided that if the annual payments were made by the companies in money it should be invested by the commissioners in State bonds "of the same character" as those issued to such company, which bonds were to be cancelled. The sinking fund, when paid, was, in all cases, to be passed directly to the credit of the company, and be a release from that amount due by them to the State. Each company, instead of "providing" the semi-annual interest, as under the act of 1852, upon the original amount of bonds issued to it, was required to provide only for the interest on "the *amount* of bonds unpaid at the time said interest falls due. The Comptroller was directed to keep a regular account against each company, charging them with the amount of bonds originally issued to them by the State, and crediting them by the amount of sinking fund paid; and he was to furnish the Treasurer statements of the amount due by each company on the first of June and December of each year, so that he could know how much interest each company had to pay. On the first of February, 1861 (Acts extra session 1861, p. 25), the General Assembly of Tennessee suspended for one year so much of the act of March 20, 1860, as require the railroad companies to pay annually 2½ per cent on the amount of bonds issued to them. On May 7, 1861, said General Assembly passed an act (second extra session 1861, p. 36) leaving it *discretionary* with the Governor to appoint a receiver or to permit the affairs of the

several railroads to remain in the hands of the companies, as the interest *of the State might suggest.*

It will be seen that from the passage of the act of February 11, 1852, down to the late war, the State of Tennessee claimed the exclusive right to control what is called the sinking fund, to increase or suspend it, to change the character of the payments, the mode of investment, and the persons in control of the investment. That the State claimed the debt as due to her, and not to the bondholders, and though these various acts, and the reports of the Comptroller and of the sinking fund commissioners under them, were all public, no bondholder was ever heard to protest against the authority assumed by the State, or against the cancellation and destruction of securities, which the companies had paid into the sinking fund, and which fund, it is now claimed, was created to secure the payment of the State bonds by the companies to the holders.

The same may be said of the course that was pursued in regard to the payment of interest by the companies. No bondholder ever presented a State coupon to any railroad company for payment. No Tennessee railroad company had any banker, or other correspondent in New York, to pay the coupons on the State bonds loaned to it. No company ever retained in its possession the coupons that had been paid on the bonds loaned to it. In fact, few if any of the companies kept any memorandum of the numbers of the bonds issued to them ; and it is perfectly safe to say that up to the time Comptroller Burch, in 1875, published his report, no one outside of the State had any idea as to what railroad the bonds issued before the war had been loaned.

By an act passed January 19, 1838, entitled "An Act to establish a State Bank to raise a fund for internal improvement, and to aid in the establishment

of a system of education," the General Assembly of Tennessee established a bank "in the name and for the benefit of the State," under the name and style of the Bank of Tennessee. The capital of the bank was to be $5,000,000, the State to be the sole stockholder, and a large part of its capital was to be raised by the issuance and sale of State bonds. By the same act the State became a subscriber for one-half of the capital stock in all railroads and turnpikes in the State, its stock subscriptions to be paid by the issuance and sale of State bonds. The profits or dividends to be realized by the State from its stock in said bank and said internal improvement companies, were to constitute a fund for the redemption of all of said bonds, and the payment of the interest thereon, all of which was to be done by and through the Bank of Tennessee. If said dividends were insufficient for the purpose, then by an act passed January 27, 1844, the Comptroller was required to draw his warrant upon the Treasurer in favor of any deficiency. As long as the Bank of Tennessee was in operation it was regarded as the fiscal agent of the State. All of its directors were appointed by the State; they were required to report to the State constantly kept under its control. The State Treasurer kept none of the State funds in his own hands, but deposited all the revenues of the State in the Bank of Tennessee, and could only check for the same, on checks countersigned by the Comptroller. The Bank of Tennessee paid the interest on all the State bonds, without reference to the purpose for which they were issued. This is shown by the report of the Comptroller to the session of 1851-2, when the general internal improvement law was passed. See his report, p. 65. The Merchants Bank of New York, and the Bank of North America at Philadelphia, were the corres-

pondents through whom the Bank of Tennessee paid the interest on the State debt. These correspondents would return the coupons to the Bank of Tennessee, by whom they were returned to the State. There was one account on the books of the Bank of Tennessee headed "Treasurer of Tennessee," which was credited by the revenues of the State deposited by the Treasurer, and by the dividends derived from the State stock in the bank, and the various internal improvement companies mentioned above, and was debited by the interest on the entire State debt paid by the Bank of Tennessee, and by such other sums as were drawn by the Treasurer under appropriations made by law. There was also an account on the books of the Bank of Tennessee headed "Interest paid on State bonds," the object of which was to show the exact amount paid on that account, but it shows nothing as to whom or for what purpose the bonds were issued upon which such interest was paid. There was also an account headed "Railroad companies for interest, showing the amounts and dates of all payments into the bank by the different companies, but it does not show that the payments were to be appropriated to the interest upon any particular bonds of the State, nor did the bank in fact know what bonds had been issued to any named railroad. The funds paid in by all the railroads were thrown together as a whole, and transferred either to the "Treasurer's general account" or the account headed "Interest on State bonds," which was but a sub-account of the Treasurer's, and under his control. The moneys paid in by the railroads were sent with other funds to New York and Philadelphia, where they were paid out by the correspondents aforesaid upon coupons of the State, making no distinction between the different bonds of the State. These correspondents kept

no accounts with the railroad companies, and had no idea as to whom the bonds were issued, the coupons of which they were paying.

In the Treasurer's books an account was headed "Bank of Tennessee"—the reverse of the account kept under his name at the bank. There is an account headed "Interest on Capitol bonds," in which is shown the interest paid on the bonds issued to pay for the State House. There is also an account headed "Interest on Internal Improvement bonds." It shows the gross amount paid out on such bonds, but it does not show by whom the money was furnished, nor does it show the number or character of the bonds upon which the interest was paid. There are no separate accounts with the different railroads to be found on the Treasurer's books. With the exception of the distinction between "Capitol" and "Internal Improvement" bonds, the Treasurer made no difference between the various bonds of the State, and treated them, as every one else did, as all equally the obligations of the State.

On July 1, 1861, the Legislature passed an act requiring the various railroad companies to pay the interest into the hands of the State Treasurer direct (acts 2 ex. ses., 1861, page 53, sec. 11). And on Jan. 26, 1869, they passed an act requiring them to pay it to the Comptroller of the State (Acts 1868–9, page 19). On Feb. 1, 1861, they passed an act suspending payments into the sinking fund for one year (Acts 1 ex. ses., 1861, page 25). On Nov. 23, 1865, they passed an act continuing the suspension to Jan. 1, 1867, and thereafter increased it to four per cent., to be *paid* to the Treasurer in (any) bonds of like character (Acts 1865–6, pages 10, 11).

It will thus be seen that both as to the interest and sinking fund, every one had treated the debt due from the companies as due to the State, and the

debt evidenced by the bonds as due from the State to the bondholders. The interest on the bonds loaned to respondents was not paid after July 1, 1861, and though the U. S. Circuit Court was open in Nashville after its capture by the U. S. army in February, 1862, no bondholder ever claimed the right to a receiver for non-payment of interest. On May 5, 1867, the General Assembly, by joint resolution, appointed the Comptroller, Secretary of State, Attorney General, and Commissioner of Public Roads, a board to make a settlement with the Louisville and Nashville Railroad Company, and if a satisfactory settlement could not be obtained, the Governor was authorized to have instituted such legal proceedings as might be necessary to protect the *interests of the State.* (See Acts 1865, page 150). On the 18th of November, 1865, said commissioners reported to the Legislature (see Appendix 1865-6, page 233,) they had affected a settlement ; that the bonds loaned said company by the State amounted to $560,500, and the overdue interest thereon to $147,131.25 ; that the company had proposed to pay the entire principal in straight six per cent. coupon bonds of the State and the interest in coupon bonds of the State then due ; the commissioners, "believing it to be manifestly for the interest of the State to call in this large installment of its indebtedness, and believing moreover that the company had *a right under the law regulating the sinking fund to pay of its entire indebtedness in the bonds of the State*, your commissioners cepted the proposal and executed to the company a receipt dated Nov. 17, 1865, for $707,631.25 in bonds and coupons of the State, being the total indebtedness of said company to the State of Tennessee, on account of the bonds of the State received in aid of the construction of said road, and the bridge across the Cumberland river." Copies

of said resolution and report are here filed as Exhibits Nos. A and B respectively. They were published in the Acts and Journal of that session, and no one ever controverted the right of the State to make the settlement until this bill was filed. Relying upon its validity the Louisville and Nashville Railroad Company, on April 1, 1868, executed a mortgage or trust deed, duly registered, upon its main stem and branches to James Punnett and Junius B. Alexander, citizens of the State of New York, to secure an issue of $8,000,000 of bonds, of which $7,070,000 are now outstanding in the hands of *bona fide* holders for value, without notice that such a claim as complainants now set up would ever be made. The said Punnett has since died, and John B. Smith, of Louisville, Kentucky, has been substituted in his stead as Trustee. On Nov. 1, 1873, said company executed another mortgage or trust deed, duly registered, conveying the same property and also the Memphis and Ohio, and the Memphis, Clarksville and Louisville Railroads to Henry F. Vail, a citizen of the State of New York, and John B. Smith, a citizen of Louisville, Ky., to secure an issue of $4,000,000 of bonds, $2,000,000 of which are now outstanding in the hands of holders for value, ignorant that such a claim as complainant now makes would ever be set up.

Respondents insist that the Trustees in said mortgages or deeds of trust are necessary parties, without whom no safe decree can be made; it is also submitted that if complainant's theory is correct, the State of Tennessee is also a necessary party, and respondents rely upon this defense as though the same were specially pleaded. Further answering, respondents admit that during the late war the railroad companies did not pay the interest on the bonds issued to them, and after the war most of

them still continued in default in making interest payments. The State of Tennessee was also in default during the greater part of that time, and the market value of her bonds had depreciated. In March, 1865, they were at fifty cents, but in December, 1865, they were at ninety-two cents in the dollar, as stated by the Financial Review of New York.

Respondents deny that any of the officials of the Louisville and Nashville Railroad Company ever conceived the project of avoiding any legal liability arising out of the loan of the State bonds to said company, though it is true that they treated the lien on their railroad as the absolute property of the State, and did not recognize any trust as existing in favor of the holders of the bonds whose money the company had received. Respondents acted under the honest belief then, as now, that the lien did be-belong exclusively to the State, and if they have mistaken the law, their mistake was occasioned by the construction that all parties interested in it have placed upon Internal Improvement laws of Tennessee from 1852 down to the filing of the bill. Respondents have made heavy expenditures, and incured weighty obligations on the faith that the contemporaneous construction placed upon the law for nearly thirty years was correct, and they respectfully submit that the complainant and the other holders of such bonds will not be allowed to agitate a question which they waived at a time when they saw respondents acting upon the belief that it could not an would not be made. Respondents rely upon the defenseof laches and other matter of equitable estoppel as fully as though the same were especially pleaded.

The Nashville and Decatur Railroad Company, created by the consolidation of the Tennessee and Alabama Railroad Company and the Central South-

ern Railroad Company, in March, 1871, paid to the State of Tennessee $3,268,176 in bonds of the State in full of the debt due from said company to the State for bonds loaned. Said company had raised the money to buy the bonds paid in by them by mortgaging the road for $2,100,000 in 1870, and selling the company's bonds in the New York market. None of the State bondholders attempted any legal proceedings to assert any rights in opposition to the course which that company was pursuing, and, believing that no such rights would be claimed, respondents leased said Nashville and Decatur Railroad in May, 1871, agreeing to pay $2,450,000 of the debts of said company, and an annual six per cent. dividend upon the capital stock of $1,512,184. 11; and, in addition to all this, respondents have spent $————, over and above their receipts, in the repair and operation of said road.

On May 25, 1871, the Memphis and Ohio Railroad Company paid the State of Tennessee $2,468, 376.50, in bonds and coupons of the State, in full of all claims and demands of State against said company, and in full satisfaction and discharge of all liens upon the property, etc., of said company originating or created by the loan or issuance of the bonds of the State to said company, under the internal improvement laws aforesaid.

On the 1st of June, 1871, said Memphis and Ohio Railroad Company mortgaged its road, etc., for $3, 500,000 of bonds, which have passed into the hands of *bona fide* holders. No State bondholder having made any complaint, the Louisville and Nashville Railroad Company consolidated with said Memphis and Ohio Railroad Company, endorsed said $3,500,000 of bonds, and have since expended $———— over and above their receipts, in the repair and operation of said road.

In January, 1871, the State of Tennessee filed its

bill in the Chancery Court at Nashville against the Memphis, Clarksville and Louisville Railroad Company, to whom State bonds had been loaned, making the holders of all of such bonds parties by publication, and also by personal service of process upon one who held such bonds, as a representative of the whole class. The State claimed that the debt from the company for bonds loaned amounting with interest to $2,454,125.92, and the lien given by the act of 1852 aforesaid to secure the same, belonged exclusively to the State, and not to the holders of the State bonds; the Court so decreed, and ordered a sale to pay the State, and respondents became the purchasers of said road at $1,700,000 in bonds of the State with coupons attached. The State bondholders have never sought to review or reverse said decree, and would not contest the claim of the State, though the existence of the suit was known in the money markets of the country. Relying upon the validity of their purchase, respondents, on August 1, 1872, placed a mortgage on said road for $2,475,000 of bonds, which respondents endorsed, and which have passed into the hands of innocent holders for value. Respondents have also expended $———, over and above their receipts, in the repair and operation of said road. During all this while, complainant, and others similarly situated, have stood by in silence, or what was even more deceptive, they have shown that they regarded the State of Tennessee as alone responsible by funding all their unpaid interest in other bonds of the State, under laws of the State authorizing it to be done. With the exception of some interest paid in 1867-8, and some paid in 1874-5, the State of Tennessee has paid no interest since the commencement of the late war, and the remainder of the interest has all been funded into new bonds of the State, except that which has matured since Jan. 1, 1876, and it has

neither been funded nor paid. The State bondholders, having treated the State as their only debtor for seventeen years past, ought not now to be allowed for the first time to assert a lien upon property which has passed into the hands of others acting in good faith, and making heavy expenditures on account of it. And having fully answered, respondents pray to be hence dismissed with their reasonable costs, &c.

RUSSELL HOUSTON,
SMITH & ALLISON,
ED. BAXTER,
Solicitors for defendants.

STATE OF..... }
COUNTY OF..... .....}

Personally appeared before me.....
an acting.....
the undersigned E. D. Standiford, President of the Louisville and Nashville Railroad Company, and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information, remembrance and belief; and he also affixed the seal of said company to said answer.

Sworn to and subscribed before me.....day of
.....1879.

.....

Exhibit A.

NUMBER XXXVIII. — JOINT RESOLUTION APPOINTING COMMISSIONERS TO SETTLE WITH THE LOUISVILLE AND NASHVILLE RAILROAD.

Resolved by the General Assembly of the State of Tennessee, That the comptroller, secretary of the State, attorney-general of the State, and commissioner of public roads of the State of Tennessee, be, and are hereby constituted commissioners on behalf of the State of Tennessee, to meet and make a settlement with the Louisville and Nashville Railroad Company, and make a report thereof to this session of the General Assembly, if practicable; if not, to the next session of the same,

Be it further Resolved, That if such settlement cannot be made by said commissioners, with said Louisvile and Nashville Railroad, as shall be satisfactory to them, the fact shall be made known to the governor of the State, and he may direct the attorney-general of the State to institute such proceedings against said company as may be necessary to protect the interests of the State.

WILLIAM HEISKELL,
Speaker of the House of Representatives.

SAMUEL R. ROGERS,
Speaker of the Senate.

Dated *May* 5, 1864.

Exhibit B.

SETTLEMENT WITH THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

NASHVILLE, TENNESSEE, *November* 18, 1865.

To the General Assembly of the State of Tennessee:

In obedience to a resolution of your honorable body, entitled "a resolution to appoint commissioners to settle with the Louisville and Nashville Railroad Company," adopted May 5, 1865, the undersigned, as commissioners on behalf of the State, have met the Hon. James Guthrie, president, and Mr. Willis Ranney, secretary of said company, at the State Capitol, for the purpose contemplated in the resolution.

The memorial upon which said resolution is founded, and which, it is said, sets forth the various matters of settlement, has not been furnished to the commissioners, but has been mislaid in one house or the other of the legislature. But from a statement of its contents by Mr. Guthrie, your commissioners are of opinion that the only matter legitimately referred to them, is the indebtedness of said company to the State on account of the aid furnished the company in the shape of bonds loaned to them, and the interest thereon.

It appears from the books of the secretary of State, that said company have, at different times, received the sum of five hundred and sixty thousand five hundred dollars ($560,500) of the bonds of the State, in aid of the construction of their road, and the bridge across the Cumberland, at Nashville. It appears from the books of the comptroller, that the interest on these bonds has been paid up to July 1, 1861. The interest accruing since that time amounts to one hundred and forty-seven thousand one hundred and thirty-one dollars and twenty-five cents ($147,131.25), making the entire indebtedness of said railroad company to the State, seven hundred and seven thousand six hundred and thirty-one dollars and twenty-five cents ($707,631.25). The principal, Messrs. Guthrie and Ranney, on behalf of the said company, proposed to pay over in straight six per cent. coupon bonds of the State, and the interest in coupons of the State now due.

Believing it to be manifestly for the interest of the State to call in this large installment of its indebtedness, and believing, moreover, that the company had a right, under the law regulating the sinking fund, to pay off its entire indebtedness in the bonds of the State, your commissioners accepted the proposal, and executed to the commissioners, on behalf of the company, the following receipt, a duplicate of which is retained in the office of the comptroller:

NASHVILLE, TENNESSEE, *November* 17, 1865.

We, the undersigned, commissioners appointed by the General Assembly of the State of Tennessee, by joint resolution adopted May 5, 1865, "to meet and make settlement, on behalf of the State, with the Louisville and Nashville Railroad Company," have this day met and settled with the Hon. James Guthrie, president, and Willis Ranney, secretary of said company, and have received from them five hundred and fifty-one coupon bonds of the State, for one thousand dollars each ($551,000), nine thousand five hundred dollars ($9,500) in coupons of the bonds of the State now due; also, one hundred and forty-seven thousand one hundred and thirty-one dollars and twenty-five cents ($147,131,-25) in coupons of the bonds of the State, in payment of interest due from said company, accruing since July 1, 1861; making in all, seven hundred and seven thousand six hundred and thirty-one dollars and twenty-five cents, being the total indebtedness of said company to the State of Tennessee, on account of the bonds of the State, received in aid of the construction of said road, and the bridge across the Cumberland River.

Given under our hands, this 17th of November, 1865.

A. J. FLETCHER, *Sec'y of State.*
S. W. HATCHELL, *Comptroller.*
T. H. CALDWELL, *Att'y-General,*
A. W. HAWKINS, *Com. of Roads.*

The bonds and coupons mentioned in said receipt are deposited with the comptroller of the State, and a list of the numbers and amount of the coupons is filed in the office of the secretary of State.

From the statement of Mr. Guthrie, your commissioners are of opinion that the other matters contained in the memorial, grow out of the consolidation of said road with the Edgefield and Kentucky road, by the acts of December 1, 1855, and December 3, 1859, and should be settled by the two companies, unless the latter road should fall permanently into the hands of the State. At any rate, the adjustment of these matters has been waived for the present by consent.

The last installment of interest, amounting to sixteen thousand eight hundred and fifteen dollars ($16,815), was paid by said company into the Bank of Tennessee, on the 9th day of May, 1861, as appears from their receipt. This was two days after the adoption of the Secession Ordinance; but as the law required the payment to be made to the bank, and as your commissioners can not see that the status of the bank was changed at that early day, they consider the

payment legal. The fact that the fund was lost by the bad faith of the bank, does not, in the opinion of your commissioners, furnish any just or legal grounds for recourse on the company.

Respectfully submitted.

A. J. FLETCHER, *Sec'y of State.*
S. W. HATCHELL, *Comptroller.*
T. H. CALDWELL, *Att'y-General.*
A. W. HAWKINS, *Com. of Roads.*

Circuit Court of the United States,

Middle District of Tennessee.

IN EQUITY.

CALVIN AMORY STEVENS, who sues on behalf of himself and other holders of Tennessee State Bonds,

vs.

The Louisville and Nashville Railroad Company.

ANSWER AND CROSS-BILL OF JOHN B. SMITH.

MATTHEWS, RAMSEY & MATTHEWS,
Solicitors.

STANLEY MATTHEWS,
Of counsel.

The Answer of JOHN B. SMITH, a citizen of the State of Kentucky, who voluntarily appears, having been made a Defendant thereto by order of the Court, to the Bill of Complaint filed by CALVIN AMORY STEVENS, said Complainant, against the Louisville and Nashville Railroad Company, sued by the name of the Louisville and Nashville and Great Southern Railroad Company, Defendants, in the United States Circuit Court for the Middle Dtstrict of Tennessee.

This defendant, the said John B. Smith, having been made a party defendant to said bill, by order of the Court, now enters his appearance thereto, by Matthews, Ramsey & Matthews, his solicitors, and for answer to said bill, or to so much and such parts thereof as he is advised it is material for him to answer unto, but without waiving any benefit or advantage of exception thereto, that can or may be had to the same, on account of the errors, uncertainties, and imperfections therein contained, says:

1. He admits that the Louisville and Nashville Railroad Company are a body politic and corporate, chartered by the acts of the General Assembly of the Commonwealth of Kentucky. The right of way to construct their railroad from the line between the States of Kentucky and Tennessee to Nashville was granted them by the acts of the General Assembly of Tennessee, but they have never been incorporated by said State, and therefore are not citizens thereof, but of the State of Kentucky.

2. He admits that the object and purpose of the creation of said corporation by the said charter and

laws, was the construction, completion, and thereafter the operation and management, among others, of a line of railway for the transportation of passengers and freight, from the city of Louisville in the State of Kentucky, to the city of Nashville, in the State of Tennessee. For this purpose such powers were granted to said corportion as are declared in the several charters and acts of incorporation of Kentucky, and acts giving it a right of way and to transact business in the State of Tennessee. The said corporation was authorized to borrow money for the purposes of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for and insure the payment of its liabilities.

3. This respondent denies that the Louisville and Nashville Railroad Company were incorporated by an act passed by the legislature of Tennessee, in 1851, or at any other time; and that their corporate name has ever been changed by statute or otherwise to that of the "Louisville, Nashville and Great Southern Railroad Company." The words "Great Southern" are no part of the corporate name, but are a part of the name of a system of roads controlled by them through purchase, lease, or consolidation, of which system the original Louisville and Nashville Road is a part.

This respondent has not been furnished with a copy of Exhibit A to the bill, which is said to contain the several charters and acts with their several amendments passed by the Legislature of Tennessee; therefore he can neither admit nor deny their correctness, and he demands strict proof thereof, so far as the same may be material.

5. This respondent admits that the General Assembly of the State of Tennessee, on the 11th of February, 1852, passed an act, entitled "an act to establish a system of internal improvements in this

State." and various other statutes amendatory and supplementory thereto and in execution thereof, but does not admit that the copies thereof set out in the bill are correct, or that those referred to therein are all that are material to be considered, and denies that the construction thereof claimed by the complainants in said bill is the true and rightful interpretation thereof, and particularly that the same created any debt or obligation from the said Louisville and Nashville Railroad Company to the holders of any bonds of the State of Tennessee, loaned to said company by the State, and sold and put in circulation by said company, or that the lien reserved and declared in said laws was reserved and declared in favor of the holders of the bonds of the State, or in anywise enured to them, either by the terms of the said statutes, or in virtue of any agreement or contract with the holders of said State bonds, expressed or implied, made by and between them and said railroad company of the State of Tennessee, or otherwise; and on the contrary thereof, this respondent insists that the said statutes, according to the true meaning thereof, are laws of the State of Tennessee, defining, declaring, and regulating the duties and obligations toward said State alone, of the several railroad companies, to each of which it loaned its bonds, for the uses and purposes therein named, and reserving and securing to the said State, and to it alone, its rights and interests, as against said railroad companies, in consequence of the loan to each thereof of any of its own bonds; and that the only contract to which the holders of the bonds of the State of Tenneseee are parties, or in which they have any legal or equitable or beneficial interest, is directly with the State, and is contained only in the bonds themselves, whereby they agreed for the payment of the interest and principal, as therein stipulated, to look

alone to the faith and credit of the State, thereby pledged for the same.

And this respondent further says, as a matter-of-fact, that all bonds of the State of Tennessee loaned to the said railroad companies under said acts, and particularly those loaned to the Louisville and Nashville Railroad Company, were sold in the market as straight Tennessee State bonds; that is to say, as other bonds of the State of Tennessee, issued upon the mere credit of the State, and without other security, and on which the State was liable as principal, and as distinguished from bonds of railroad companies, indorsed or guaranteed by the State, and on which both the railroad company and the State were bound, the former as principal, the latter as surety; and this respondent says that, in consequence of this difference, and in virtue of said bonds being what was known in the market by the public as straight Tennessee bonds, the said bonds including those loaned to the Louisville and Nashville Railroad Company, sold before the war, commanded a premium in the market, and were sold at or above par, while bonds of other descriptions, on which the railroad companies were bound as principals and the State of Tennessee as surety, and secured by a mortgage lien upon the railroad property, directly to the holders of the same, could not be sold except at a very considerable discount; and this respondent insists that it was to meet this condition of the market, which was well known, and to avoid and prevent the loss occasioned by this distrust of bonds, on which railroad companies were bound as principals, and the State merely as surety, that the legislation introduced by the Acts of January 15 and February 11, 1852, was shaped so that the bonds of the State to be issued under it should rest alone, without other security, upon the public confidence in the ability and willingness of

the people and government of the State of Tennessee to meet and pay at maturity all its obligations and debts, as, at that time, it always had done, and as at that time it was believed it always would continue to do; and all the provisions in said legislation looking to security for the payments to be made by the railroad companies, were arrangements to which the State and the railroad companies alone were parties, and for the sole indemnity of the State against loss on account of its liability for this interest and principal of its own bonds, issued and loaned to the said several companies.

And this respondent says that it was not in the contemplation of the parties, at the time of the passage of said Internal Improvement Acts of 1851, 1852, nor at the several times when the bonds of the State were issued, in pursuance thereof, to the several railroad companiel mentioned therein, nor when any of said bonds were sold by said railroad companies, that the State of Tennessee would ever fail promptly and punctually to pay the current interest on said bonds; and that, consequently, it is inadmissible now to construe said acts as if they contained provisions looking to such contingency, and providing against it—more especially as if such construction had been put on said laws at the time of said negotiation, it would have been evidence of such distrust in the good faith or ability of the State to meet its obligations as would materially have affected the market value of said bonds, if not prevented their sale; and, on the contrary thereof, this respondent says that so little room was there for such a construction of these acts, that express provision was therein made, in the 5th section of the act of February 11, 1852, whereby it was made the duty of the comptroller, and he was thereby authorized, "upon his warrant, to draw from the treasury any sum of money necessary to

meet the interest on such bonds, as may not be provided for by the company, as provided for in this act; and the comptroller shall report thereof to the General Assembly from time to time."

And this respondent further says that whatever were or may be supposed to have been the rights of the holders of the State bonds, issued under said act of February 11, 1852, after sale thereof by the railroad companies, to which they had been loaned and issued, they were taken subject to the provisions of the 12th section of said act, whereby it was enacted "that the State of Tennessee expressly reserves the right to enact, by the legislature, hereafter, all such laws as may be deemed necessary to protect the interest of the State, and to insure the State against any loss, in consequence of the issuance of bonds under the provisions of this act, but in such manner as not to impair the vested rights of the stockholders of the companies."

And that all the subsequent acts, amendatory of said act of February 11, 1852, and supplementary thereto, particularly the said acts of 1869, 1870, for the retirement of the State debt, and for the sale of delinquent railroads, and all acts and transactions under them, whereby settlements were affected between the State and said several railroad companies, and the indebtedness of the latter, arising in consequence of the loan to them of the bonds of the State was liquidated and satisfied, and the lien to secure the same discharged, were strictly and fairly in execution of the intentions and purposes of the original act, and of the power reserved to the State in the 12th section thereof.

And this respondent further says that said act of February 11, 1852, not only recognizes the lien thereby reserved and created, as belonging to the State in law, but also in equity, for its own sole and exclusive benefit, to be dealt with, enforced, or dis-

charged, according to its own discretion, and with a view only to its own interests, as its own property, security and indemnity ; and also that the plan provided in said act for the gradual but ultimate payment and extinction of the obligations of the railroad companies under the same, in making provision for a sinking fund, according to the terms of the 7th section thereof, explicitedly admitted the principle of a payment by said railroad companies on account thereof, of any bonds of the State, whether the identical ones issued to the company or not, and guaranteed to each of said railroad companies, as a right, the opportunity to pay its whole indebtedness, arising under said act, in any bonds of the State of which it might become possessed, and was merely a provision for effectuating the just and lawful exchange of one debt for another, upon the basis of mutual rights of set-off.

6. This respondent admits that there was delivered to the Louisville and Nashville Railroad Company, on account of its railroad, and of a joint road and bridge across Cumberland River, various internal improvement bonds of the State of Tennessee, but of what number, dates, or series, this respondent has no knowledge, information, or belief, and therefore does not admit, and demands proof that the bonds described in the bill were the identical bonds issued to them.

This respondent, further answering, shows that the Louisville and Nashville Railroad Company received from the State of Tennessee her six per cent. coupon bonds at the times and in the amounts following, and none others, and at no other dates, namely :

Rec'd	April	30,	1858,	5	bonds, amounting to	$50,000
"	"	"	"	150	"	"	"	150,000
"	"	"	"	100	"	"	"	100,000
"	July	15,	1859,	150	"	"	"	150,000
"	April	20,	1861,	5	"	"	"	5,000

This respondent does not know, and does not admit, that Exhibit C to the bill is a true copy of the bonds and coupons issued under any of the acts of the General Assembly of the State of Tennessee; nor do they know or admit that said bonds are *fac similes* of each other; nor do they admit that said bonds, or any other of said bonds issued by the State of Tennessee to said company, are numbered as set forth in the bill; and upon all these points demands strict proof.

Said bonds, to the amount of five hundred and sixty thousand five hundred dollars, were received by or on behalf of the Louisville and Nashville Railroad Company, through properly appointed officers, and were by said company negotiated and sold, in pursuance of law, to *bona fide* holders, but none were received prior to April 30, 1858. The proceeds of these bonds were applied as directed by the laws under which they were loaned to said railroad company. This respondent has no knowledge, information, or belief as to how many of said bonds are now outstanding, nor in whose hands any of them are, nor whether the complainant is the owner or holder of any of them, nor as to whether complainant is the holder of any coupons attached to any of said bonds, nor as to when any of said coupons may have matured, nor what they amount to; neither does this respondent know how numerous the holders of said bonds are, nor where they reside. Upon all these points, so far as material, this respondent demands strict proof.

7. This respondent denies that the Louisville and Nashville Railroad Company has failed to comply with the provisions of the said general internal improvement law, but on the contrary insists that in all respects, it has fully and faithfully performed all its obligations under the laws of the State of Tennessee, in respect to any bonds of said State,

issued and loaned to it under the same, to said State and to all other persons whatsoever to whom it owed any obligation; but it admits that the State has failed to pay the holders of its bonds the coupons thereon, representing interest accruing thereon, which became due on the first day of January, 1876, and all falling due since that date, and is in default therefor.

8. The respondent admits that the Louisville and Nashville Railroad Company claims that the lien reserved on its property under said acts, by virtue of the loan to it of any bonds of the State, has been fully satisfied and discharged, without payment of the interest or principal of any said bonds that may be held by complainants, and that it has been absolved from all obligations assumed by it by the acceptance and use of any of said bonds; but denies that said claim is a pretense—that it is fraudulent or illegal—and on the contrary insists that the same is made in good faith, and that it is honest in itself, violating no right of the complainants, and is in strict conformity with law and equity.

This respondent says that the discharge and satisfaction of the debt due from the Louisville and Nashville Railroad Company to the State of Tennessee, and the lien reserved under said statutes for the security of the same, was effected in the manner following, to wit: On May 5th, 1865, the General Assembly of the State, by joint resolution, appointed the comptroller, secretary of state, attorney-general, and commissioner of public works a board to make a settlement with the Louisville and Nashville Railroad Company, and if a satisfactory settlement could not be obtained, the governor was authorized to have instituted such legal proceedings as might be necessary to protect the interests of the State. On the 18th of November, 1865, said commissioners reported to the legislature that they

had effected a settlement; that the bonds loaned said company by the State amounted to $560,500, and the overdue interest thereon to $147,131.25; that the company had proposed to pay the entire principal in straight six per cent. coupon bonds of the State then due. The commissioners say: "Believing it to be manifestly for the interest of the State to call in this large installment of its indebtedness, and believing moreover, that the company had a right under the law regulating the sinking fund to pay off its entire indebtedness in the bonds of the State, your commissioners accepted the proposal, and executed to the company a receipt dated November 17th, 1865, for $707,631.25 in bonds and coupons of the State, being the total indebtedness of said company to the State of Tennessee on account of the bonds of the State received in aid of the construction of said road and the bridge across the Cumberland River." Copies of said resolution and report are herewith filed as Exhibits Nos. 1 and 2 respectively. And the respondent says that the said railroad company actually paid and delivered said bonds and coupons as in said receipt is recited.

9. This respondent further says that the facts of this settlement were public and notorious, and were well known at the time to the public at large, to the holders of Tennessee State bonds, and, as this respondent avers and charges, to complainant and those with whom he is associated and acting in the prosecution of this and similar suits; and that it was equally well known that it was made under a claim of right and in pursuance of an interpretation of the statutes of 1851, 1852, and of the subsequent legislation, which treated the lien upon the railroads reserved thereby as belonging to the State, not in trust for the holders of its bonds, but in its own right, to be dealt with in its own discretion and with sole regard to its own interests;

and that consequently, although at the time this settlement was made in 1865, the State was in default for non-payment of the interest on its bonds from July, 1861, no protest or complaint was ever made by any holder of State bonds against this mode of dealing on its part with the said roads, nor against this settlement with the Louisville and Nashville Railroad Company, until the filing of this bill.

10. This respondent further says that he admits that the bonds and coupons paid by the Louisville and Nashville Railroad Company to the State of Tennessee in the said settlement, were not the identical bonds and coupons originally advanced and loaned to said company and by it negotiated and sold, but that the same, in part at least, were other bonds and coupons of the State of Tennessee, of like character thereto; that by the terms of the seventh section of the act of February 11, 1852, the said company was required, at the end of five years after completion of its road, to set apart one per centum per annum upon the amount of bonds issued to it, and use the same in the purchase of any bonds of the State of Tennessee, paying said bonds so purchased into the Treasury of the State after assigning them to the Governor, taking his receipt therefor, and which bonds, it was thereby declared, so paid in, as between the State and said company, should be a credit on the bonds issued to the company; and said bonds so paid in, and the interest accruing thereon from time to time, should be held and used by the State as a sinking fund for the payment of the bonds issued to the company, but that should said company repurchase any of the bonds issued to it under the provisions of said act they should be a credit as aforesaid and canceled; and thereby, as this respondent insists, there accrued to the company, in addition to the obligation

to pay said one per cent. per annum, the right at its election, with the concurrence and consent of the State, to pay an additional amount of bonds of the State of any description, into said sinking fund with like effect.

And this respondent further says, that by an act of the General Assembly of the State of Tennessee, passed March 20, 1860, entitled "An Act to provide for the equalization and investment of the sinking fund in the bonds issued to, or indorsed for railroads in this State," it was provided that the money or bonds paid in to the sinking fund by the 1st day of January, 1860, with the interest thereon, should be passed directly to the credit of the parties having so paid the same, and be a release to said party for that amount of the debt due by them to the State of Tennessee, all bonds so paid in being canceled; and that after said date of January 1, 1860, the companies who had received State bonds, should be required to pay two and one-half per centum per annum on the amount of such bonds, as a sinking fund, which amount might, at the election of the companies, be paid in cash, or in the like character of bonds that might have been issued to them respectively; if paid in cash, the same to be invested immediately in bonds of the State, to be canceled, and to be of the same character as those issued to the said company making the payment; and it was further provided therein, that the sinking fund when paid, in all cases, shall be passed directly to the credit of the said company or corporation, and be a release to said company or corporation from that amount due by them to the State and that, thereafter, each railroad company should provide the interest semi-annually as therein provided by law, on the amount of bonds unpaid at the time said interest falls due, and not on the original amount issued to said company by the State, as

theretofore provided; and thereby there was recognized in said companies the right to pay, in manner aforesaid, in any bonds of the State, the entire amount due from it to the State on account of bonds originally issued to it by the State; and it was in the exercise of this right that the Louisville and Nashville Railroad Company made its payment as aforesaid, which was accepted by the State in satisfaction of the debt due from it to the State, on account of the bonds issued to it, and in discharge of the lien reserved by the State as its security therefor.

11. This respondent further says, that, at the time said settlement was made, the circumstances of the situation were such as to make it most advantageous to the State of Tennessee, and beneficial to its credit and its creditors. The war had but recently prior thereto definitely closed. During the period of actual military operations, the railroads had been the prize of contending armies, as instruments of offense and defense. In the course of the struggle, they had been stripped of their equipments, and parts of them destroyed and repaired, as circumstances permitted, to fit them for military use, but so that when they were finally restored, on on about August, 1865, to their owners, they were destitute of rolling stock, cars, machinery, shops and tools, and almost everything needed for an equipment, nearly everything of that description then in actual use upon the roads being the property of the United States, furnished and employed for its military uses. This they were permitted to purchase and did so in pursuance of executive orders issued by the President of the United States in September and October of that year, but being unable to pay cash, gave their obligations for the purchase money payable in installments and bearing interest. The roads themselves, their road beds, tracks, trestle-works, bridges, and permanent works of every description, were, to a greater or less

extent, out of repair, in need of restoration, in some in a state of actual dilapidation. Business of every kind had been suspended by the war, except military transportation, and now, that employment ceased with the cessation of hostilities, but the fruits of peace, in the revival of industry and trade, could only come with the lapse of time, and the gradual accommodation of the community to the new order of things. The general result was that the railroads required large sums of money to put them in a condition to earn an income, and, after that, would have to wait the slow operation of general causes upon the social condition of the people, before any revival of trade would renew their sources of revenue. In the meantime, a large arrearage of debt for unpaid interest had accumulated by reason of the default, during the whole period from July, 1861, both of the State and the railroad companies, in consequence of which the State securities had become discredited in the markets of the world, and their holders, as seen by the quotations in the stock markets at New York, were willing to dispose of them at a large discount. To buy them from those willing to sell at their own offers, was no injustice to the bondholders; to pay them into the sinking fund as a credit on the railroad debt, would be a relief to the companies and would diminish the burden of the State, and reduce the amount of its obligations, so as probably to bring the State debt within limits which would make it tolerable, and so diminish the motive and temptation to repudiate it, while the demand thus created for depreciated securities would naturally, as in fact it did, raise the prices in the market of those held by others who did not choose to sell; so that the transaction was well calculated without injury or loss to anyone, to prove beneficial to all the important public and private interests affected.

12. This respondent further says, that about the time said settlement was made with the Louisville and Nashville Railroad Company, on November 8, 1865, the General Assembly of the State of Tennessee, by joint resolution of that date, appointed a joint committee to examine into the condition of the sinking fund, and ascertain what railroads had paid, and what amount, and if they had due credit, and also that they be authorized to cancel all bonds of the State that had been paid in by railroads; and this respondent says, that while he is ignorant of the exact amount of State bonds that, at the time, had been paid in on account of the sinking fund by the railroads, and for which they were entitled to credit on account of their indebtedness to the State for its bonds loaned to them under the general internal improvement acts, yet, that it amounted to a considerable sum, and that said bonds had been paid in, as by law the railroad companies had the right to do, whether they were the identical bonds loaned to the company paying them into the State Treasury, or other State bonds, issued to other railroads, or for the general purposes of the State; and this respondent says, that no other mode of reducing the indebtedness of the State to it bondholders, or of the railroad companies to the State was in fact practicable, for the reason that no difference was made in the stock market in Tennessee State bonds, as to price or description, on account of having been issued to one railroad company and not another, or between those issued to railroad companies under the internal improvements acts, and those issued by the State for other purposes; nor could any purchaser or seller of bonds have knowledge, without carefully tracing their numbers in the books of the Comptroller of State, on what account and to whom they were originally issued, so that no railroad company could practically go into the

market and purchase exclusively State bonds which had been originally loaned to it, under the internal improvement acts, and it was a fact and practice well known to the complainants, as to all the holders of the State bonds, that they were from time to time bought in the market for the purpose, and actually paid into the sinking fund, without discrimination, as stated hereinbefore, accepted by the State as a payment on account of the debt due from the railroad company so paying them into the Treasury, and credited to it in account, and treated as between such company and the State as paid and canceled bonds.

13. The respondent further says that at or about the date of said settlement between the Louisville and Nashville Railroad Company and the State of Tennessee, to wit, on the 23d day of November, 1865, the General Assembly of said State passed an act entitled an act to amend an act entitled "an act to establish a system of internal improvement in the State," passed the 1th of February, 1852, whereby the Governor of the State was authorized and instructed to issue the six per cent. coupon bonds of the State, similar in character in every respect to the bonds issued under said act of 1852, and maturing at the same time, to an amount sufficient to pay off all the bonds and interest past due, as well as that to fall due January 1, 1866, or on any bonds that might fall due during the year 1867, issued or indorsed by the State prior to the 6th day of May, 1861, said bonds to be dated on the 1st day of January, 1866, and payable on the 1st day of January, 1892, to be sold and negotiated at not less than par or exchanged for the interest coupon bonds thereby provided to be paid, estimating each at their par value. And it was further provided in said act, that the state should have the liens upon each of the roads, their franchises, and

property, for the prompt and faithful payment of the principal and interest of the bonds thereby authorized to be issued, to pay the interest on the bonds said company should have paid interest on as it had under the said act of February 11, 1852, for the bonds issued under that law; and the said several railroad companies receiving aid under this act should pay the interest on said bonds, as it matured, in the same manner and under the same rules, regulations, and restrictions as they were then required to pay on the bonds issued or indorsed for them under the said act of February 11, 1852, commencing the payment of said interest on the 15th day of June, 1866, the amount of interest due on January 1, 1866, by any railroad company to the State on bonds issued to or indorsed for said company, being charged up to said company on the same terms and conditions of the original loan under the said act of February 11, 1852.

It was further provided by the said act of November 23, 1865, that the obligation on the part of the railroad companies to pay into the sinking fund two and one-half per cent. per annum on the amount of their indebtedness to the State, be suspended until January 1, 1867, and said companies relieved from the payment of sinking fund then past due, and that during the year 1867 each of said companies should be required to pay four per cent. on the amount of indebtedness to the State, to be paid in any bonds of the State of a like character to those issued or indorsed for said company, with the coupons on the same that have not matured, semi-annually on the first of April and October, and a like amount every year thereafter until the whole of their indebtedness is discharged.

And this respondent says that every holder of bonds of the State of Tennessee, originally issued under the internal improvement laws, including the

complainant, if at that time he was holder of any such, accepted the provisions of this act of November 23, 1865, surrendering to the State the overdue and unpaid coupons of said bonds, which had matured from July 1, 1861, to January 1, 1866, and received in exchange therefor the said State bonds, authorized thereby, and subject to all the terms and conditions of said act, affecting either said new bonds or the original bonds held by them, and thereby admitted and consented to the expressed right reserved to the railroad companies to pay their indebtedness to the State, on account of said bonds originally loaned to them, in any bonds of the State of like character.

14. This respondent further says, that after the proceedings and legislation of the State of Tennessee, hereinbefore set out, including said settlement with the Louisville and Nashville Railroad Company of November 17, 1865, and the passage of said act of November 23, 1865, the market price of the bonds of the State of Tennessee, in the city of New York, rose from about fifty cents on the dollar in the month of March in that year to ninety-two cents on the dollar in the month of December in the same year.

15. This respondent further says, that at its same session, on the 18th day of January, 1866, the General Assembly of the State of Tennessee passed another act to amend the said act of February 11, 1852, wherein it is recited that the Memphis and Ohio Railroad, the Memphis, Clarksville and Louisville Railroad, the Edgefield and Kentucky Railroad, the Manchester and McMinnville Railroad, the Nashville and Northwestern Railroad, the Mississippi and Tennessee Railroad, the East Tennessee and Virginia Railroad, the Knoxville and Kentucky Railroad, the Winchester and Alabama Railroad, and the East Tennessee and Georgia Rail-

road were all out of repair, the bridges and trestles on said road had been destroyed, and the companies were unable to put them in running order, and the State had a large interest in said roads, and it was to the interest of the State and the people of the State that the said roads should remain under their control, and that they should be put in running order. It was therefor thereby enacted that the Governor of the State shall be authorized and instructed to issue the bonds of the State, bearing six per cent. interest, with coupons attached, similar in every respect to the bonds issued under the act intended to be amended, viz.: the act of February 11, 1852, and maturing as thereafter provided, to the said named railroad companies, or receivers of such roads, appointed by the Governor under the laws of the State, in the amounts therein named, amounting in the aggregate to the sum of $3,283,000, besides $125,000 to the Nashville and Chattanooga Railroad Company, for the completion of the branch road from Bridgeport, Alabama, to Jasper, Tennessee, and $75,000 to the Southern Central Railroad, for the purposes of assisting in paying for their bridge.

And it was further provided in said act, that each of the said railroad companies, to which relief was granted by said act, should pay to the Treasurer of the State, as a sinking fund, four per cent. on the amount of its indebtedness under said act, as also the interest on said bonds; the sinking fund to commence on the first of January, 1867, as a fund for the payment of said bonds; and the State thereby reserved a lien on all the profits of said road, for the money thereby advanced for the repairing of the same, which the State should have the right to enforce, if the said companies should fail to pay the four per cent. and interest as provided by the said act, and which should be enforced as provided by law,

in the Internal Improvement act of the State; and said lien, thus reserved, was thereby also declared to be cumulative of, and in addition to, the lien declared in the act of 1852, which said act it was intended to amend, which lien—that is, under said last mentioned act—was thereby declared to extend to, and cover the money or bonds to be advanced to said roads, under said act.

16. This respondent further says, that in pursuance of the same policy, to extend and enlarge the aid of the State to its railroads, in order to restore and repair them, the General Assembly of the State passed additional acts, to which reference is here made, viz:

An act to incorporate the Tennessee and Pacific Railroad Company, and for other purposes, passed May 24, 1866:

An act to amend an act, passed January 18, 1866, entitled "An Act to establish a system of Internal Improvement," passed February 11, 1852.

Under which two acts, bonds of the State were directed to be loaned to the amount of three millions and ten thousand dollars ($3,010,000), to the railroad companies therein named, upon the same conditions prescribed in the Internal Improvement act of 1852, and its amendments.

And by an act passed February 18, 1867, the act of November 23, 1865, above referred to, was amended so as to postpone the commencement of the payment by the railroad companies, of the four per cent. sinking fund, from the year 1867 until the year 1870.

17. The respondent further says, that many of the railroad companies were unable to provide the means to meet the interest falling due on the 1st of July, 1867, which by law they were bound to provide, and failed to do so, to the extent of nearly $800,000, but that the State nevertheless paid the

whole amount of interest falling due on that date on its bonds to the holders thereof; and thereafter, on the 7th day of December, 1867, the General Assembly passed an act entitled "An Act to amend the Internal Improvement laws of the State, passed February 11, 1852," and thereby authorized the loan in a like manner and under the same conditions imposed by the internal improvement laws of the State, to the several railroad companies therein named, of State bonds, to the aggregate amount of three million seven hundred thousand dollars ($3,700,000), besides an additional sum of $5,000 per mile to the Tennessee and Pacific Railroad Company; and by section 15 of said act it was "Provided, that if the several railroad companies or either of them to whom the bonds of the State has been loaned by this act or former acts, shall fail for two consecutive years, to pay the interest that may accrue upon the bonds loaned to them severally, then, and in that case, the governor, secretary of state and comptroller, may, at their discretion, sell said railroad track, railing, rolling-stock, etc., upon such terms and conditions as they may deem best to secure the interest of the State, and shall retain of the proceeds of said sale, the amounts loaned to said companies and the interest due on the same, with expenses of said sale," and also, on the 26th of January, 1869, passed an act to amend the internal improvement act of 1852, by making it the duty of each railroad company, to whom had been issued the bonds of the State, at least fifteen days before the interest becomes due, from time to time, to pay the amount of such interest, including exchange and necessary commissions to the comptroller of the State, instead of the Bank of Tennessee, as originally provided in the acts of 1851-1852.

18. This respondent further says, that on Febru-

ary 24, 1870, the General Assembly of Tennessee passed an act to fund the floating debt of the State, and thereby made provision for funding the interest on the public debt of the State, then due, and that which might become due on or before the first day of January, 1874, in new bonds of the State, with coupons attached, redeemable by the State in not less than five nor more than twenty years, at the pleasure of the State, bearing interest at the rate of six per cent. payable semi-annually; and it was thereby also enacted that the amount of interest then due, or that might become due by the 1st day of January, 1872, to the State on bonds issued to railroad companies, might be paid by said railroad companies in the bonds of the State or past due coupons, as the said companies might elect, and the comptroller of the State was authorized and instructed to receive said bonds or coupons in payment of the said interest due to the State by said railroad companies, provided that no railroad company in the State should be entitled to the provisions of that section, unless they had paid or should pay, in cash, fifty per cent. of the amount due and owing to the State by such railroad companies on the first day of July, 1869.

And this respondent says, that on March 17, 1873, the General Assembly of Tennessee passed an act entitled "an act to fund the past due bonds and coupons of the State, and to sustain the credit thereof," and thereby enacted that all the outstanding legally issued bonds of the State of Tennessee, due, or to become due before the first day of January, 1874, as well as all past due coupons, and coupons maturing on or before the first day of January, 1874, might be funded in six per cent. coupon bonds of the State of Tennessee, to be styled "the new series of funding bonds," redeemable, at the option

of the State, after July 1, 1884, and due and payable on the first of July, 1914, and bearing six per cent. interest evidenced by coupons attached, payable semi-annually, on the first days of January and July in each and every year, from and including the first day of July, 1874, to the maturity of the bond; and it was thereby further enacted, that the faith, honor and credit of the State of Tennessee was thereby pledged for the payment of said bonds at maturity, and for providing a sinking fund for that purpose, and for the prompt payment of interest on said bonds, as well as the interest on the registered bonds thereinafter provided for, commencing with the interest to fall due the first day of July, 1874; and it was thereby made the duty of the treasurer of the State to set apart for that exclusive purpose so much of the revenues as might be necessary to pay the interest on said bonds, commencing with the interest that falls due the first day of July, 1874; and, by the ninth section of said act, it was further enacted, that no coupons of bonds then due should be paid other than those coupons falling due on and after the first day of July, 1874, and only such coupons of said bonds maturing after that time as should be presented to the comptroller, who was required to examine the same, and if found to have been issued according to law, should be registered, and the registration properly indicated thereon by him and the Secretary of State. It was also provided by the fifth section thereof that the said act should not affect the liabilities of any railroad, turnpike, or other corporation or person, for or on account of the bonds issued or loaned or indorsed by the State for internal improvements or other purposes, nor any lien in favor of the State as against purchasers of delinquent railroads.

And this respondent says, that all the holders of the bonds of the State, including the complainant,

if he then held any such, or if not his predecessors in the ownership of any he may now hold, and those associated and acting with him in the prosecution of this and similar suits, accepted the provisions of these acts, and funded their overdue coupons, and received payment of current accruing interest after January 1, 1874, to January 1, 1876, in accordance with the terms thereof, and particularly that they registered their bonds, in compliance with the provisions of the ninth section of said act, and thereby assented to and adopted all the provsions of said act.

19. This respondent further says, that in the meantime, on the tenth day of November, 1868, the Governor of the State had informed the General Assembly that six railrords in the hands of Receivers were at that time indebted to the State, on interest account due July 1, 1868, one million one hundred and twenty thousand nine hundred and ninety-six dollars and eighty-six cents, and stated that he would have seized two other roads for failure to pay the July interest of that year, and placed them in the hands of Receivers, but that he had learned by experience that to do so would only entail increased burdens upon the State treasury, and expressed the opinion that the interest of these roads as well as that of the State required that they should be sold, and the proceeds thereof applied to the reduction of the State debt. In the same message he said :

"Leading gentlemen, connected with important railroads largely indebted to the State, are asking for authority to issue second mortgage bonds, with a view of exchanging them for State bonds. Thus purchasing State bonds by the avails of these second mortgage bonds, the debt now due by the State would in like amount be tranferred to these railroad companies, and so the State would be re-

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lieved of a burden of several million of dollars of debt now resting upon it. I regard this proposition with approval, and advise its adoption by the Assembly. The payment of large debts now due from the roads alluded to, and the sale of the roads already in the hands of Receivers, would reduce the State liabilities at least one-third."

And this respondent says that at that session, in pursuance of the policy thus recommended, the General Assembly passed, on February 25, 1869, the act entitled "an act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," and on the 20th day of January 1870, the act entitled "an act for the payment of the State debt," and on the 1st day of July, 1870, the act "an act authorizing the sale and transfer of the interest of the State in delinquent railroad companies," and on the 8th day of July, 1870, the act entitled "an act appointing commissioners under certain circumstances to lease delinquent railroads," and on the 21st day of December, 1870, the act entitled "an act to amend the act of 1870, ch. 79, for the sale of interest of the State in delinquent railroad companies, passed July first, 1870," and on the 13th day of December, 1871, the act entitled "an act to further enable railroad companies to pay their debts to the State and complete the construction of their roads."

And this respondent says that at the session of the General Assembly in 1871, the governor in his message to that body, stated that under said act of February 25th, 1869, as amended by the act of January 20th, 1870, ch. 44, over eight million of dollars in the bonds of the State had been retired and canceled; that other roads had purchased and were then purchasing bonds with which to cancel their liabilities to the the State under the said acts; and in order to pre-

vent further delay on the part of solvent roads that had not retired their indebtedness to the State under said act, recommended that the act be either repealed, to take effect at some future time not remote, or that its provisions be so amended as that the roads be required to pay all accrued interest as well as the sinking fund nor theretofore paid in. In the same document, the governor also stated that but three of the delinquent railroads remained unsold, and added: "It will be a gratifying result when the State is entirely divorced from the railroad system. And, although the sales will not realize all that was desired, and leaves a large debt to be provided for, yet the internal improvement system of Tennessee has added millions to her wealth and diffused such energy and enterprise into every class of society, that no intelligent man can regret the policy which inaugurated the system, notwithstanding a large amount of appropriations made since the war have been improperly expended."

20. The respondent further says that the several railroad companies to whom loans of internal improvement bonds had been made and the State of Tennessee dealt together under the said acts of February 25th, 1869, and of January 20th, 1870, according to the terms thereof, the various railroad companies who were able to do so, and who were on that account called solvent, purchasing in the open market, at the market price, bonds of the State of Tennessee, without discrimination as to their description, or on what account, or to whom issued, the only practicable mode in which they could make purchases of the public debt of the State, and paying them to the State in satisfaction of the indebtedness of such railroad companies to the State on account of its advances of its own bonds to them, and in discharge of the lien reserved there-

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for to the State under the internal improvement law of 1852 and the amendments thereto; and in order to raise the means so to do, the said railroad companies issued their own bonds, secured by mortgages on their railroad property as a first lien thereon, in substitution for that of the State, and declared by law and the certificate of the State to be first mortgage bonds, and the same were sold in the markets of this country and of Europe, on the faith thereof, to innocent purchasers for value, to the amount of many millions of dollars, now outstanding; and that those railroads, known as delinquent railroads, the corporations owning which were not able thus to liquidate their indebtededness to the State, were sold by the authority of the State by virtue of judicial decrees, duly rendered in proceedings instituted and prosecuted by the State under and according to the provisions of the act of December 20th, 1870, to which all parties in interest, including the holders of State internal improvement bonds, were parties and bound thereby; and the purchasers thereof paid for the same, as by said act and decree they were authorized to do, in any bonds of the State.

And the respondent says that by virtue of said dealings and transactions, and in consequence thereof, the result, in regard to the reduction of the public debt reached, was as follow: The total bonded debt of the State, including $13,782,000 of funding bonds issued under the acts of 1866, 1868 1873, amounted to $49,173,316.66. Of this, $29,251,-250.00 represented the amount of internal improvement bonds loaned to railroad companies, but not including the unpaid interest thereon, embraced in any series of funding bonds. The amount of $28,-163,016.66 have, under the various acts aforesaid, been surrendered and canceled; and of them, $16.-265,000 were internal improvement bonds loaned to

railroad companies, and $4.326,000 were funding bonds under the acts of 1866 and 1868. The account between the State and the two descriptions of railroads, is as follows:

First. Defaulting railroads sold:

Bonds issued	$14,628,000.00
Int. funded, 1866	1,122,306.00
Int. unpaid July, 1870	3,331,163.12
U. S claims assumed	511,560.00
Total	$19,593,029.12
Amount realized by sale	6,698,000.00
Loss to State	$12,895,029.12

Second. Roads which have settled their indebtedness:

Bonds issued	$12,742,000.00
Int. funded January, 1866	1,850,768.00
Sinking fund paid	493,306.00
Unaccounted for	1,255,700.00

21. And these respondents further say that during the whole period of these transactions, from, and including the settlement between the State and the Louisville and Nashville Railroad Company, beginning in May, 1865, and during the whole progress of this legislation, and of the liquidation, arrangements and settlements authorized and required by it, and of the dealings between the railroad companies and the State, and of the railroad companies in borrowing money on the security of mortgages on their property, on the faith that all prior liens on account of the loans by the State of internal improvement bonds had been thereby removed and discharged, the holders of the bonds of the State of Tennessee, in general, had knowledge of all that

was taking place ; the facts themselves were public, historical and notorious, and the holders of Tennessee State bonds, at an early stage in this series of transactions, formed a voluntary organization represented by a committee, for consultation and cooperation in matters of common interest, and kept themselves well advised of each step in the history of the business ; and on or about May 1st, 1870, said bondholders, through their committee, of which J. J. Donaldson, Esq., was chairman, obtained a legal opinion from Hon. Henry E. Davies and Noah Davis, eminent counsel of the city of New York, affirming that they were, in equity, beneficial owners of a lien under the act of 1852, reserved nominally to the State, upon each railroad, for the specific payment of the identical bonds issued to that railroad company, by virtue of a contract, protected by the Constitution of the United States; which opinion was printed in pamphlet form and generally circulated among the holders of the Tennessee State bonds, but not otherwise. And this respondent says, that he is informed and believes, and so avers that the said, or a similar organization of Tennessee State bondholders, has been kept up ever since, and that the present suit and other similar suits now pending, are prosecuted in the name of the complainants by a committee of such organization.

And this respondent says that at no time did the said holders of Tennessee State bonds, or any one of them, including the complainant or those associated and acting with him in the prosecution of this and similar suits, ever make any demand upon any railroad company for the payment of any interest on the said bonds, or receive from any railroad company payment of any coupon, or notify or inform, either directly or indirectly, any railroad company that it was claimed that any such liability, right or lien existed, or make any objection to any of the

acts of the State of Tennessee, inconsistent therewith, or object to the passage thereof, or oppose any payment, settlement, and liquidation by any railroad company, of its indebtedness to the State, or make public in any way their claim as now asserted in this bill of complaint.

On the contrary thereof, this respondent says that they not only acquiesced in all the foregoing acts and transactions by tacit approval and consent, but that they actively advised and urged in individual cases, including present complainant, or some one or more of those with whom he is and has been acting, the consummation of these arrangements, as beneficial to the holders of State bonds, and by frequent and public communications to and with the authorities of the State, treated and dealt with it as their only debtor, and gave it to be understood that they looked to no other, and had no other to whom to look.

And this respondent says that on the 16th day of January, 1878, there was held in the city of New York, a meeting of holders of Tennessee State bonds, the call for which was signed by the complainant, and others with whom he was then acting, and with whom he is still associated, and who, jointly with him, are prosecuting this and similar suits—namely, Eugene Kelly, Peter Geddes, John T. Terry, and others—and at which they were present and participating, and at which the following preamble and resolutions were adopted, viz.:

"*Whereas*, On the 8th March, 1877, at a meeting between a committee of five members of the Tennessee Legislature (of which Col. John H. Savage was chairman) and a committee of arbitration (of which Mr. George S. Coe was chairman), to whom had been referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders, the debt of the State of Ten-

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nessee was fully discussed, with a view of ascertaining and determining what a fair and equitable adjustment of it would be; and,

"*Whereas*, At the conclusion of the conference between the committee of the Tennessee Legislature and the committee of arbiters, the committee of arbiters made an award that the debt of the State of Tennessee ought to be readjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest, the new bonds to bear interest at six per cent., payable semi-annually, and the coupons for interest to be made receivable for all taxes and dues to the State; and,

"*Whereas*, The session of the legislature expired by constitutional limitation a few days after the award of the arbiters was rendered, and there was no time to enact a law to give it effect; and,

"*Whereas*, It was very generally understood that an extra session of the legislature would be convened to accept a proposition from the bondholders to compromise the State debt, on the terms of the award of the committee of arbitration, and to enact a law to fully carry it out, the holders of a very large amount of bonds of Tennessee did make and send to the governor propositions of compromise on the terms of said award, and the governor did thereafter convene the legislature in extra session, to consider said proposition; and,

"*Whereas*, During the sitting of the legislature, the intervention of other parties, proposing and advocating before it other and different terms of settlement than those considered by the committee of the legislature and the committee of arbitration, and awarded by the latter committee, and agreed to by the bondholders, was prejudicial to the interests of the State of Tennessee, and to her creditors, in so far as it has delayed a settlement; and,

"*Whereas*, The bondholders of Tennessee had

neither an agent nor other person to represent them before the legislature, but confided in the legislature and fully expected that the senators and representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentlemen who had acted as a committee of arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly; therefore,

"*Resolved*, That efforts made by any persons who purported to represent the bondholders of Tennessee were entirely unauthorized, and that the declaration alleged to have been made at Nashville, that a settlement could be affected with the bondholders upon a lower basis than that proposed by the committee of arbitrators, of which Mr. George S. Coe is chairman, has no foundation in fact, so far as it relates to the great body of bondholders.

"*Resolved*, That while we deplore the attitude assumed by the legislature, while assembled at Nashville, in December, toward the bondholders, we believe that it resulted from the influence and unwarrantable interference of other parties than real bondholders or their representatives.

"*Resolved*, That we have an abiding belief that the people of the great State of Tennessee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them; the effect of which will be to paralyze the prosperity of the State, subvert its best interests, and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors.

"*Resolved*, That the people of Tennessee be urged to adopt such legislation as will uphold the honor of the State, and evince proper regard for the high integrity which has hitherto characterized her citizens.

"*Resolved*, That a committee of five be appointed, consisting of Eugene Kelly, John T. Terry (of E. D. Morgan & Co.), J. G. K. Duer (of James G. King's Sons), Peter Geddes (of Geddes & Smith), and Dr. R. S. Moran—Eugene Kelly to be chairman—to take such action as in their judgment, may be for the interest of the bondholders; but with the understanding that no settlement less favorable than the award of the committee of arbitration be accepted.

And this respondent says that on the 11th day of December, 1877, the complainant, C. Amory Stevens, had addressed, by telegraph, from New York, to the governor of Tennessee, a communication, which was laid before the General Assembly, then in session, as follows:

"NEW YORK, Dec. 11, 1877.

"GOVERNOR JAS. D. PORTER:

"I am a large holder of Tennessee bonds, which have been held for years strictly for investment account. I was a signer of the former petition, sent you through the committee of arbitration; and while I would prefer to have that proposition accepted, yet, if it would require a revenue bill that is deemed by the legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and hereby do change it. I propose to take fifty cents on the dollar. I think this dispatch represents the sentiments of most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the legislature, through your excellency, to reciprocate this feeling, and make a settlement without further delay.

"Please submit this to the legislature for its action.

"THE ESTATE OF CALVIN STEVENS,
"C. AMORY STEVENS, *Trustee.*"

And this respondent says that the public debt of the State of Tennessee, which was the subject of these communications and propositions, amounted at that time, as reported to the General Assembly by the governor, in the same message which transmitted the proposition made through the committee of arbitration, to twenty-three millions two hundred and twelve thousand six hundred and six dollars, on the first day of January, 1878, and which consisted chiefly of bonds issued under the internal improvement acts of 1851, 1852, and the amendments thereto, and those issued for past due interest, and known as funding bonds, constituted what remained of the outstanding bonds of the State, after the payments made by the railroad companies in satisfaction of their indebtedness to the State under the internal improvement acts, and the sale of the delinquent roads and the payment of the purchase money thereof in the bonds of the State, as provided in the acts of 1869, 1870.

And this respondent says and insists that the construction of the internal improvements acts, thus practically established by the subsequent legislation and dealing of the public authorities of the State, with the railroad companies and with its creditors, and universally acquiesced in, has thereby acquired the force of law, and ought not now be questioned, much less disturbed, to the injury and loss of many innocent persons in this country and in Europe, who have invested large sums of money on the faith and credit thereof; and this respondent says that the complainant and those with whom he is associated and is acting in this behalf, have, by their

acquiescence in this course of dealing, invited and encouraged others to repose confidence and trust in the same, and ought not now to be permitted, in equity, to question the validity of transactions to which they have thus consented, and that whatever rights they may originally have had, as holders of State bonds, adverse thereto, have been lost, by their own laches, acquiescence, and neglect to urge them, when they ought, if they had intended to insist upon them, and the claim now made so to do is, consequently, stale and inequitable.

22. This respondent further says, that on the 21st day of February, 1868, the legislature of the State of Kentucky passed an act entitled "an act to amend the charter of the Louisville and Nashville Railroad Company, approved March 5, 1850," whereby the said character was so amended as to authorize said company, by a vote of a majority of the board of directors thereof, by legal means to acquire an interest in or to unite or consolidate with any railroad company or companies chartered by the laws of any other State or States whose railroad may connect with the Louisville and Nashville Railroad, or with which the Louisville and Nashville Railroad Company might then have a contract for a consolidation of their companies, so as to make the same one company, with a consolidated stock and property, with one board of directors to manage and control the affairs of said company, and with power in the Louisville and Nashville Railroad Company to form such consolidation by the purchase of the railroad or railroads, other property, rights franchises, and privileges of such other company or companies, or by any other legal mode they might select, provided a majority in interest of the stockholders should accept said amend-

ment and authorize the board of directors, which was accordingly thereafter done.

And that in order to enable the Louisville and Nashville Railroad Company to effect the foregoing purposes, it was thereby authorized to issue and sell, either before or after such consolidation, the bonds of the company signed by the president and countersigned by the secretary thereof, with the seal of the company affixed and coupons for interest attached and signed by said secretary, to an amount not exceeding eight millions of dollars, bearing interest at a rate not exceeding seven per cent. per annum, payable semi-annually, and the bonds and coupons to be payable at such place or places as the company might select, and the bonds to be payable at a period not exceeding thirty years from their respective dates; and that, in order to secure the prompt payment of the interest and principal of the bonds issued by virtue of said act, said company should have power to execute a mortgage or deed of trust, to a trustee or trustees, and to fill any vacancy that might occur by reason of the death, resignation or removal of such trustee, upon the main line of said road, the branches, and other property, rights, privileges, and franchises of said company, including any railroad and property, rights, franchises, and privileges that they might acquire by such consolidation as aforesaid, whether said railroad and property, rights, franchises, and privileges be within the State of Kentucky or in any other State or States. (A copy of said act is hereto attached, as part hereof, and marked Exhibit No. 3.)

And this respondent says, that on or about the 1st day of April, 1868, the Louisville and Nashville Railroad Company, in pursuance of the authority conferred by said act, duly accepted by it as aforesaid, executed and delivered its certain indenture of

mortgage of that date, made by and between said company, a duly organized corporation of the State of Kentucky, party of the first part, and James Punnett and Junius B. Alexander, trustees, party of the second part, reciting that, whereas, the party of the first part needs and desires to raise money to be used for the purposes authorized by the laws of the State of Kentucky, and especially by a law approved on the 21st of February, 1868, and duly accepted by a majority of the stockholders of said company, as contemplated by said act, and has determined that the proceeds of eight millions of its bonds will be only adequate for such purposes; and, whereas, the party of the first part, at a meeting duly held on the 11th day of August, 1868, adopted the following resolutions:

"*Resolved*, That the president of the company has prepared and executed the bonds of the company, with interest coupons attached, to the amount of eight millions of dollars; the bonds to be of the denomination of one thousand dollars each, to bear date the 1st of April, 1868, and to be payable 1st of April, 1898, to be signed by the president and countersigned by the secretary, with the seal of the corporation affixed, to bear interest at the rate of seven per cent. per annum, payable semi-annually, on the 1st day of October and April in each year, upon the presentation and surrender of the proper coupon at the Bank of America, in the city of New York, and that he execute, on behalf of the company, a mortgage of even date with said bonds on the property, rights, franchises, and income of said company, to include such terms and stipulations as will best secure the bondholders, to secure the payment of the principal and interest of said bonds, as provided by the act of the General Assembly of the Commonwealth of Kentucky, approved 21st of Feb-

ruary, 1868, entitled 'an act to amend the charter of the Louisville and Nashville Railroad Company.' The coupons to be attached to said bonds to be either signed by the secretary or authenticated by the engraving of his proper signature thereto, which latter shall be sufficient to bind this company. Said bonds to be numbered from one to eight thousand, inclusive."

And that whereas, in pursuance of said resolutions and authority, the party of the first part has caused to be prepared and made ready for sale eight thousand of its coupon bonds, numbered consecutively from No. 1 to 8,000, inclusive; each of said bonds (save as to said numbers) being equal and alike, and bearing even date therewith, and having thereto respectively attached like coupons for interest, consecutively and correspondingly numbered and dated as to each set of coupons, which bonds and coupons were in the form therein set out; and thereby, for securing the payment of said bonds and coupons to all those who might at any time have a right to demand such payment of the party of the first part, in consideration of the premises and of one dollar to it paid, the party of the first part granted, conveyed, mortgaged, transferred, and set over to the party of the second part, their successor or successors, as trustees, for the common and equal benefit of all those who might be bondholders: 1. The main line of the railroad of the party of the first part, between the city of Louisville, in the State of Kentucky, and the city of Nashville, in the State of Tennessee, or in either said city, being about one hundred and eighty-five miles long. 2. The Bardstown branch of said road, extending from the said main line to and within the village of Bardstown, in the State of Kentucky, being about seventeen miles long. 3. The Memphis branch of said road, extending from said main line

to the State line of Kentucky, toward Memphis, in Tennessee, being about forty-seven miles in length. 4. The Lebanon branch of said road, extending, as then completed, from said main line to and into the town of Crab Orchard, a distance of about eighty-five miles; and also said branch as the same shall be extended or completed, until it shall reach the Tennessee State line, being in entire length about one hundred and seventy-two miles. 5. The Richmond branch of said main line, and being also a branch of said Lebanon branch, extending and as the same shall be extended from and in the town of Stanford, to and into the town of Richmond, in the State of Kentucky, a distance of about thirty-three miles, including in and with the railroad and branches so granted and mortgaged, the land and other real estate already, or to be, acquired and used for the purpose of said road or branches, respectively, within the limits designated; all buildings or other erections made or to be made thereon, the rails and the proper rolling stock, equipment tools, machinery used or to be used thereon or therein; all appurtenances of any portion of said property, the income and generally the rights, privileges, and franchises then of the party of the first part, or at any time to be acquired or received for the purpose of the use or enjoyment of said road or branches, and subject to the conditions and stipulations therein contained, a copy of which deed of trust and mortgage is hereto attached as a part hereof, and marked Exhibit No. 4. And this respondent says that said deed of trust and mortgage was executed and has been duly registered in accordance with the laws of Kentucky and Tennessee, and that the same is a valid and effectual conveyance for the uses and purposes therein mentioned.

And the respondent says that since the execution

and delivery thereof, as aforesaid, the said James Punnett, named therein, as one of the grantees, has deceased, and this respondent, a citizen of the State of Kentucky, has been duly appointed in his stead, and has accepted said trust, and has been, so far as necessary, acting in execution thereof.

23. And this respondent further says that of said eight million loan, authorized and secured by said mortgage, there have been issued and are now outstanding bonds of said Louisville and Nashville Railroad Company to the amount of seven million and fifty-nine thousand dollars, and, of that amount, two million four hundred and thirty-three thousand dollars were used in the purchase of Tennessee State bonds, for the purpose of paying the State of Tennessee in part the indebtedness of the Memphis and Ohio and the purchase-money of the Memphis, Clarksville and Louisville Railroad Company, and which were so used, in pursuance of the terms and plan, according to which said companies, under the authority of the laws of Kentucky and Tennessee, have become consolidated with or owned by the Louisville and Nashville Railroad Company.

This respondent says that said consolidation and purchase were contemplated, as part of its purposes, by said act of the General Assembly of the Commonwealth of Kentucky, of February 21, 1868; but the same was not consummated until after the passage of said acts of the General Assembly of Tennessee, of 1869-70, heretofore referred to, and that the bonds of said Louisville and Nashville Railroad Company, of said eight million loan, secured by said mortgage, the proceeds of which were used in the purchase of Tennessee State bonds for the purposes aforesaid, were issued and negotiated in the city of New York, during the year 1870, and the Tennessee State bonds, purchased therewith, were bought in New York, in open market, at market

prices then current, during the period from January 1, 1870, to May 31, 1871.

24. And this respondent further says that on or about the first day of November, 1873, the Louisville and Nashville Railroad Company, a corporation authorized thereto by the laws of Kentucky and Tennessee, executed and delivered its indenture of mortgage of that date to Henry F. Vail, a citizen of the State of New York, and to this respondent, wherein it was recited that said company needed and desired to raise money for the purposes authorized by said laws, and that, to that end, the president and directors thereof, at a meeting duly held on the 2d day of October, 1873, had resolved that the president of said board have prepared and executed the coupon bonds of the company, not to exceed in amount four millions of dollars; three thousand of said bonds to be for one thousand dollars each, and two thousand of them to be for five hundred dollars each, and numbered from 1 to 5,000, to bear date the 1st day of November, 1873, and payable on the 1st day of November, 1883, in gold coin of the United States; to be signed by the president and countersigned by the secretary, with the seal of the company affixed, to bear interest at the rate of seven per cent. in like gold coin, payable semi-annually, on the first day of May and November in each year, upon the presentation and delivery of the proper coupons at the agency of the company in the city of New York, and that he execute, in the name and in behalf of the company, to be countersigned and sealed as aforesaid, a mortgage of even date with said bonds, on the property, rights, and franchises of the company in the States of Kentucky and Tennessee, subject to the existing mortgages of the company, and the Memphis and Ohio Railroad over the same, to secure the payment of the principal and

interest of said bonds, containing such terms and stipulations as may be deemed best to secure the same, as provided by the laws of Kentucky and Tennessee. The coupons to be attached to said bonds to be signed either by the secretary or authenticated by the engraving of his proper signature thereto, which latter should be sufficient to bind the company; and the said bonds to be numbered from 1 to 5,000 inclusive; and that the said company, in pursuance of said authority, had executed, under its corporate seal, and signed by its president and secretary, and made ready for sale, and was about to issue and negotiate five thousand of its coupon bonds, numbered as aforesaid; three thousand of which were for one thousand dollars each, and two thousand for five hundred dollars each, the form of which was therein described; and thereby, in order to secure the due and punctual payment of the before-mentioned five thousand bonds, and the said coupons for interest thereon, to the persons or corporations who, at the time being should be the owners thereof, equally in respect of all said bonds, without preference or priority of one over another, by reason of priority in the time of issue or negotiation thereof or otherwise; in consideration whereof, and and of one dollar paid, the said Louisville and Nashville Railroad Company granted, conveyed, mortgaged, transferred, and set over to the said Henry F. Vail, and this respondent, parties of the second part, and their successors, as trustees of the common and equal benefit of all those who might be the holders of such bonds:

First. The main line of the railroad of said party of the first part, between the city of Louisville, in the State of Kentucky, and the city of Nashville, in the State of Tennessee, and in said cities respectively, the same being about one hundred and eighty-five miles long.

Second. The Bardstown branch of said railroad, extending from said main line to and within the town of Bardstown, in the State of Kentucky, the same being about seventeen miles long.

Third. The Lebanon or Knoxville branch of said railroad, extending, as then completed, from said main line to and into the town of Livingston, in the State of Kentucky, a distance of about one hundred and ten miles, and also said branch as the same shall be extended or completed, until it shall reach the Tennessee State line, being in entire length about one hundred and seventy-two miles.

Fourth. The Richmond branch of said main line (and being also a branch of said Lebanon or Knoxville branch), extending from and in the town of Stanford to and into the town of Richmond, in the State of Kentucky, a distance of about thirty-three miles.

Fifth. The Memphis Branch of said railroad, extending from said main line to and into the city of Memphis, in the State of Tennessee, which includes all that part of said first party's railroad, from its main line to the line dividing the States of Kentucky and Tennessee, in the direction of the city of Memphis, a distance of about forty-seven miles, and that part of said first party's railroad extending from said dividing line between the States of Kentucky and Tennessee to and into the town of Paris, in the State of Tennessee, a distance of about eighty-three miles, the same being formerly known as the Memphis, Clarksville and Louisville Railroad, and also that part of said first party's railroad extending from and into said town of Paris to and into the city of Memphis, in the State of Tennessee, a distance of about one hundred and thirty-one miles, and formerly known as the Mem-

phis and Ohio Railroad, with all the roadway and track of said railroads and branches, and the rails thereon laid or to be laid, and the structures thereon, and all the lands, rights, easements, privileges, and franchises, acquired or to be acquired, and all other appurtenances and property, therein described, and the income and profits thereon arising, but subject to the lien of said mortgage and deed of trust of April 1st, 1868, to James Punnett and James B. Alexander, trustees, hereinbefore set forth, as to so much of said railroad and branches, and property as is in said last mentioned mortgage described; and also subject to the lien created by a mortgage on so much of said railroad line and appurtenances, and other property in the State of Tennessee, extending from the city of Memphis to the town of Paris, in said State, and formerly known as the Memphis and Ohio Railroad, made by the Memphis and Ohio Railroad Company, on the 1st day of June, 1871, to this respondent and James B. Alexander, as trustees, to secure the payment of thirty-five hundred bonds for one thousand dollars or two hundred pounds sterling each, with coupons attached and numbered consecutively from one to thirty-five hundred, inclusive, duly recorded in the proper offices in the counties in which said railroad lies, and also subject to the lien created by an indenture of mortgage on so much of said company's railroad line and appurtenances, rights, franchises, income, etc., in the State of Tennessee, as extends from the town of Paris to the line which divides the State of Kentucky and Tennessee at the point where the same is crossed by the Memphis branch of said company's railroad line, the same being formerly the Memphis, Clarksville and Louisville Railroad, made by said party of the first part on the 15th day of July, 1872, to this respondent and James B. Alexander, as trustees to

secure the payment of twenty-five hundred bonds, each for two hundred pounds sterling money of Great Britain, and numbered consecutively from one to twenty-five hundred, inclusive, and duly recorded in the proper offices in the city of Louisville and in the counties in which said railroad lies, the said grantees, as trustees, to have and to hold the said granted and mortgaged premises, upon the trusts in said deed contained, a copy of which, as a part hereof, is hereto attached and marked Exhibit No. 5.

25. And this respondent further says that soon after the execution and delivery of this deed of trust or mortgage, the Louisville and Nashville Railroad Company negotiated, issued, and sold, of the bonds thereby secured, two millions of dollars, for full value, to innocent purchasers in good faith, in the confidence and belief that the lien of the said mortgage, securing the payment of the principal and interest of the said bonds, was subject only to prior liens expressly named therein, and without any knowledge or notice whatever of the claim set up by the complainant in the bill of complaint, or that any such claim was made by him, or by any other holder of Tennessee State bonds, issued originally under said internal improvement acts or amendments thereto, either to the Louisville and Nashville Railroad Company, or to the Memphis and Ohio Railroad Company, or to the Memphis, Clarksville and Louisville Railroad Company, and in the full assurance and belief that the original lien reserved under the laws of Tennessee to said State, on account of the loan of its bonds to said railroad companies had been legally and in good faith paid off, satisfied, and discharged.

26. And this respondent further says, that he files this answer as one of the trustees named in said two deeds of trust or mortgage

above set forth in his own name, without joining his co-trustee, Junius B. Alexander or his other co-trustee, Henry F. Vail, for the reason that as the latter are citizens of the State of New York, this respondent has been advised that he could not join them in this answer, on account of the nature and limits of the jurisdiction of this Court in this case, and he insists that by reason of the premises, the claim of the complainant in the bill of complaint is without equity, and that the said mortgages and deeds of trust to this respondent for the uses and purposes therein mentioned, and for the benefit and security of the holders of the bonds therein described and intended to be secured, are the only subsisting liens on the said railroad and property therein conveyed and mortgaged.

27. And this respondent denies all charges and allegations of fraud and bad faith, made or imputed in said bill to the said Louisville and Nashville Railroad Company and to the State of Tennessee.

28. And this respondent hereby refers to and adopts as part of this his answer, all the matters and things set forth in the answer of his co-defendant, the Louisville and Nashville Railroad Company, as if the same were particularly herein repeated and set forth, so far as the same are not inconsistent with anything herein expressly stated, and so far as the same are material to his defense,

And this respondent, therefore, by reason of the premises, asks that this answer may be taken as a cross-bill, and that the complainant and his co-defendant, the Louisville and Nashville Railroad Company, may be made defendants thereto, and compelled to make answer thereto, and that on final hearing this honorable Court will order, adjudge and decree that the said deeds of trust and mortgages herein set forth, made to this respondent, and the said Alexander, and the said Vail, are, in re-

spect to the claim of the complainant, and of all other holders of the bonds of the State of Tennessee, originally loaned by said State to the Louisville and Nashville Railroad Company, the best and only liens and incumbrances, in their order, on said property therein described, and that in respect to the right and title of this respondent, as trustee under the same, and the equity of the holders of the bonds thereby intended to be secured, the lien originally reserved by the State of Tennessee on account of its bonds loaned to the Louisville and Nashville Railroad Company, has been effectually discharged and released, and that this respondent, as trustee as aforesaid, be forever quieted in his said right and title under the same, against the claim of the complainants and all other holders of like bonds of the State of Tennessee, and that they be perpetually enjoined from hereafter setting up their claim as aforesaid, and for such other and further relief as this respondent and complainant in said cross-bill may in equity and good conscience, and according to the usage and practice of Courts of Chancery be entitled to.

MATTHEWS, RAMSEY & MATTHEWS,
Solicitors for Defendant, JOHN B. SMITH.

State of Kentucky, County of

Personally appeared before me,

the undersigned, John B. Smith, and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information remembrance and belief.

Sworn to and subscribed before me, this
day of , 1879.

APPENDIX.

Exhibit No. 1.

NUMBER XXXVIII. — JOINT RESOLUTION APPOINTING COMMISSIONERS TO SETTLE WITH THE LOUISVILLE AND NASHVILLE RAILROAD.

Resolved by the General Assembly of the State of Tennessee, That the comptroller, secretary of the State, attorney-general of the State, and commissioner of public roads of the State of Tennessee, be, and are hereby constituted commissioners on behalf of the State of Tennessee, to meet and make a settlement with the Louisville and Nashville Railroad Company, and make a report thereof to this session of the General Assembly, if practicable; if not, to the next session of the same,

Be it further Resolved, That if such settlement cannot be made by said commissioners, with said Louisvile and Nashville Railroad, as shall be satisfactory to them, the fact shall be made known to the governor of the State, and he may direct the attorney-general of the State to institute such proceedings against said company as may be necessary to protect the interests of the State.

WILLIAM HEISKELL,
Speaker of the House of Representatives.

SAMUEL R. ROGERS,
Speaker of the Senate.

Dated *May* 5, 1864.

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Exhibit No. 2.

SETTLEMENT WITH THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

NASHVILLE, TENNESSEE, *November* 18, 1865.

To the General Assembly of the State of Tennessee:

In obedience to a resolution of your honorable body, entitled "a resolution to appoint commissioners to settle with the Louisville and Nashville Railroad Company," adopted May 5, 1865, the undersigned, as commissioners on behalf of the State, have met the Hon. James Guthrie, president, and Mr. Willis Ranney, secretary of said company, at the State Capitol, for the purpose contemplated in the resolution.

The memorial upon which said resolution is founded, and which, it is said, sets forth the various matters of settlement, has not been furnished to the commissioners, but has been mislaid in one house or the other of the legislature. But from a statement of its contents by Mr. Guthrie, your commissioners are of opinion that the only matter legitimately referred to them, is the indebtedness of said company to the State on account of the aid furnished the company in the shape of bonds loaned to them, and the interest thereon.

It appears from the books of the secretary of State, that said company have, at different times, received the sum of five hundred and sixty thousand five hundred dollars ($560,500) of the bonds of the State, in aid of the construction of their road, and the bridge across the Cumberland, at Nashville. It appears from the books of the comptroller, that the interest on these bonds has been paid up to July 1, 1861. The interest accruing since that time amounts to one hundred and forty-seven thousand one hundred and thirty-one dollars and twenty-five cents ($147,131.25), making the entire indebtedness of said railroad company to the State, seven hundred and seven thousand six hundred and thirty-one dollars and twenty-five cents ($707,631.25). The principal, Messrs. Guthrie and Ranney, on behalf of the said company, proposed to pay over in straight six per cent. coupon bonds of the State, and the interest in coupons of the State now due.

Believing it to be manifestly for the interest of the State to call in this large installment of its indebtedness, and believing, moreover, that the company had a right, under the law regulating the sinking fund, to pay off its entire indebtedness in the bonds of the State, your commissioners accepted the proposal, and executed to the commissioners, on behalf of the company, the following receipt, a duplicate of which is retained in the office of the comptroller:

NASHVILLE, TENNESSEE, *November* 17, 1865.

We, the undersigned, commissioners appointed by the General Assembly of the State of Tennessee, by joint resolution adopted May 5, 1865, "to meet and make settlement, on behalf of the State, with the Louisville and Nashville Railroad Company," have this day met and settled with the Hon. James Guthrie, president, and Willis Ranney, secretary of said company, and have received from them five hundred and fifty-one coupon bonds of the State, for one thousand dollars each ($551,000), nine thousand five hundred dollars ($9,500) in coupons of the bonds of the State now due; also, one hundred and forty-seven thousand one hundred and thirty-one dollars and twenty-five cents ($147,131,-25) in coupons of the bonds of the State, in payment of interest due from said company, accruing since July 1, 1861; making in all, seven hundred and seven thousand six hundred and thirty-one dollars and twenty-five cents, being the total indebtedness of said company to the State of Tennessee, on account of the bonds of the State, received in aid of the construction of said road, and the bridge across the Cumberland River.

Given under our hands, this 17th of November, 1865.

A. J. FLETCHER, *Sec'y of State.*
S. W. HATCHELL, *Comptroller.*
T. H. CALDWELL, *Att'y-General,*
A. W. HAWKINS, *Com. of Roads.*

The bonds and coupons mentioned in said receipt are deposited with the comptroller of the State, and a list of the numbers and amount of the coupons is filed in the office of the secretary of State.

From the statement of Mr. Guthrie, your commissioners are of opinion that the other matters contained in the memorial, grow out of the consolidation of said road with the Edgefield and Kentucky road, by the acts of December 1, 1855, and December 3, 1859, and should be settled by the two companies, unless the latter road should fall permanently into the hands of the State. At any rate, the adjustment of these matters has been waived for the present by consent.

The last installment of interest, amounting to sixteen thousand eight hundred and fifteen dollars ($16,815), was paid by said company into the Bank of Tennessee, on the 9th day of May, 1861, as appears from their receipt. This was two days after the adoption of the Secession Ordinance; but as the law required the payment to be made to the bank, and as your commissioners can not see that the status of the bank was changed at that early day, they consider the

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payment legal. The fact that the fund was lost by the bad faith of the bank, does not, in the opinion of your commissioners, furnish any just or legal grounds for recourse on the company.

Respectfully submitted.

A. J. FLETCHER, *Sec'y of State.*
S. W. HATCHELL, *Comptroller.*
T. H. CALDWELL, *Att'y-General.*
A. W. HAWKINS, *Com. of Roads.*

Exhibit No. 3.

AN ACT TO AMEND THE CHARTER OF THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, APPROVED MARCH 5, 1850.

SECTION 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the charter of the Louisville and Nashville Railroad Company, approved March 5, 1850, be, and is hereby, so amended as to authorize said company, by a vote of a majority of the board of directors thereof, by legal means to acquire an interest in or to unite or consolidate with any railroad company or companies chartered by the laws of any other State or States, whose railroad may connect with the Louisville and Nashville Railroad or with which the Louisville and Nashville Railroad Company may now have a contract for a consolidation of their companies, so as to make the same one company, with a consolidated stock and property, with one board of directors to manage and control the affairs of said company, and with power in the Louisville and Nashville Railroad Company to form such consolidation by the purchase of the railroad or railroads, other property, rights, franchises and privileges of such other company or companies, or by any other legal mode they may select; *Provided*, a majority in interest of the stockholders shall accept this amendment, and authorize the board of directors to act therein.

May consolidate or unite with companies chartered in other States.

May purchase such roads.

Upon vote of majority of stockholders.

SEC. 2. That in order to enable the Louisville and Nashville Railroad Company to effect the purposes specified in the preceding section of this act, the said company is hereby au-

May issue and sell bonds.

thorized to issue and sell, either before or after such consolidation, the bonds of the company, signed by the president and countersigned by the secretary thereof, with the seal of the company affixed, and coupons of interest attached and signed by said secretary, to an amount not exceeding eight millions of dollars, bearing interest at a rate not exceeding seven per cent. per annum, payable semi-annually, and the bonds and coupons to be payable at such place or places as the company may select, and the bonds to be payable at a period not exceeding thirty years from their respective dates.

May execute mortgage.

SEC. 3. That in order to secure the prompt payment of the interest and principal of the bonds issued by virtue of this act, said company shall have power to execute a mortgage or a deed of trust, to a trustee or trustees, and to fill any vacancy that may occur by reason of the death, resignation, or removal of such trustee, upon the main line of railroad, the branches, and other property, rights, privileges, and franchises of said company, including any railroad and property, rights, franchises and privileges that they may acquire by such consolidation as aforesaid, whether such railroad and property, rights, franchises and privileges be within the State of Kentucky or in any other State or States; and said mortgage or deed of trust shall contain such stipulations as may be deemed necessary and the most effectual in securing the payment of the interest and principal of said bonds at the maturity of the same.

Foreclosure of mortgage.

SEC. 4. That said mortgage or deed of trust, and any foreclosure of the same, shall be for the benefit of all the holders of said bonds; and the Louisville Chancery Court, in the State of Kentucky, or any other Court of similar jurisdiction in the city of Louisville, shall have exclusive jurisdiction over all proceedings instituted for such foreclosure, by proper decree in a proper case made in such Court; and upon the institution of proceedings for a foreclosure, it shall be the duty of the president of the company to file in the cause a perfect list of the bonds issued by authority of this act, verified by his affidavit; and no decree of foreclosure by a sale of the property, rights, franchises and privileges, conveyed by the mortgage or deed of trust, shall be executed until ninety days' notice of the time and place of sale shall have been published in one or more of the newspapers published in the cities of New York, Louisville, Nashville and Memphis; and any purchaser at such sale shall, upon the payment of the purchase-money, be vested with the property, rights, franchises and privileges conveyed in the mortgage or deed of trust purchased by him under such decree.

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SEC. 5. That it shall be the duty of the said company to create and secure an ample sinking fund for the payment of the interest as it falls due, and for the redemption of the bonds at maturity.

Sinking Fund.

SEC. 6. That should the Louisville and Nashville Railroad Company form such consolidation as specified in the first section of this act, with any railroad company chartered by any other States as aforesaid, they shall have power to adopt such corporate name as they may select; and in such name shall have all the powers and privileges heretofore conferred upon said company by the laws of the States of Kentucky and Tennessee.

Consolidation made—corporate name may be changed.

SEC. 7. This act shall take effect and be in force from its passage.

Approved February 21, 1868.

Exhibit No. 4.

MORTGAGE FROM THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY TO JAMES PUNNET AND JUNIUS B. ALEXANDER, TRUSTEES. DATED APRIL 1, 1868.

THIS INDENTURE OF INSURANCE, Made by and between the Louisville and Nashville Railroad Company (a duly organized railroad corporation of the State of Kentucky), party of the first part, and James Punnett and Junius B. Alexander, trustees, party of the second part, this first day of April, one thousand eight hundred and sixty-eight, witnesseth, as follows :

1. *Whereas*, The party of the first part needs and desires to raise money to be used for the purposes authorized by the laws of the State of Kentucky, and especially by a law approved on the twenty-first day of February, one thousand eight hundred and sixty-eight, and duly accepted by a majority of the stockholders of said company, as contemplated by said act, and has determined that the proceeds of eight millions of its bonds will be only adequate for such purpose:

2. *And whereas*, The party of the first part, at a meeting duly held on the 11th day of August, 1868, adopted the following resolutions:

Resolved, That the president of the company have prepared and executed the bonds of the company, with interest coupons attached, to the amount of eight millions of dollars. The bonds to be of the denomination of one thousand dollars each, to bear date the 1st of April, 1868, and to be payable 1st of April, 1898; to be signed by the president, and countersigned by the secretary, with the seal of the corporation affixed; to bear interest at the rate of seven per cent. per annum, payable semi-annually, on the first day of October and April in each year, upon the presentation and surrender of the proper coupon at the Bank of America, in the city of New York; and that he execute on behalf of the company a mortgage of an even date with said bonds, on the property, rights, franchises and income of said company, to include such terms and stipulations as will best secure the bond holders, to secure the payment of the principal and interest of said bonds, as provided by the act of the General Assembly of the Commonwealth of Kentucky, approved 21st February, 1868, entitled "An act to amend the charter of the Louisville and Nashville Railroad Company." The coupons to be attached to said bonds to be either signed by the secretary, or authenticated by the engraving of his proper signature thereto, which latter shall be sufficient to bind the company. Said bonds to be numbered from one to eight thousand, inclusive.

3. *And whereas*, In pursuance of such resolutions and authority, the party of the first part has caused to be prepared and made ready for sale eight thousand of its coupon bonds, numbered consecutively from No. 1 to No. 8,000, inclusive, each of said bonds (save as to numbers) being equal and alike, and bearing even date herewith (and having thereto respectively attached like coupons for interest, consecutively and correspondingly numbered and dated, as to each set of coupons), which bonds and coupons are in the form following:

The Louisville and Nashville Railroad Company hereby acknowledges itself indebted to James Punnett and Junius B. Alexander, or bearer, in the sum of one thousand dollars, for money borrowed, which will be due, and said company will pay, in lawful money of the United States, on the first day of April, 1898, with interest at the rate of seven per cent. per annum, payable semi-annually, in like money, on the first days of April and October of each year, as appears by the proper coupons therefor, hereto attached, at the Bank of America, or other agency of the company, in the city of New York, on the presentation of such coupons and bonds, when respectively due, which, on payment, are to be surrendered.

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This bond is one of a series of eight thousand bonds, of like amount, tenor, and date, numbered consecutively from one to eight thousand, inclusive, being for the aggregate sum of $8,000,000, issued or to be issued by this company, for money borrowed or to be borrowed thereon ; and each bond is equally secured by a mortgage of even date herewith, upon the property, rights, privileges, and franchises (and the income therefrom) of said company, according to the purport of said instrument, duly authorized by the laws of the State of Kentucky, and duly executed and recorded, and delivered by said company to James Punnett and Junius B. Alexander, trustees, therein named.

The only lien upon the property, rights, privileges, franchises, or income mortgaged as aforesaid, is that created to secure the payment of bonds of said company;to the amount of $2,450,000 ; and, of said eight thousand bonds, two thousand five hundred, or so many thereof as may be needed for said purpose, are to be issued only to raise money to pay, or to take up by exchange, said $2,450,000 bonds, which, as so acquired, are to be cancelled, to the end that there shall be outstanding, of both classes of said bonds, no more than $8,000,000 at any one time ; and the security for said outstanding bonds is to be discharged of record. And this bond is to be authenticated by the signatures of said trustees.

In witness whereof, said company has caused this bond to be signed by its president and secretary, and its corporate seal to be thereto affixed, at its office, in the city of Louisville, this first day of April, 1868.

———*President.* ———*Secretary.*

The bond may be registered at the office of the company, at the option of the holder, and thereafter (unless at any time registered payable to bearer), will be payable only to such person as, on this bond, shall appear, from time to time, to be the last registered transferee or owner.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY will pay Thirty-five Dollars ($35) to bearer, at the Bank of America, in the city of New York, on the first day of October, 1868, being Six months' Interest on Bond No. 3,739. Coupon No. 1. W. RANNEY, Sect'y.

4. *Now, therefore*, For securing the payment of said bonds and coupons to those who may at any time have a right to demand such payment of the party of the first part, and in consideration of the premises, and of the sum of one

dollar unto the party of the first part paid by the party of the second part, the receipt of which, before the ensealing hereof, is hereby acknowledged, the party of the first part has granted, conveyed, and mortgaged, and does hereby grant, convey, and mortgage, and does transfer and set over unto the party of the second part, their successors or successor, as trustee (for the common and equal benefit of all those who may be bondholders), (1.) The main line of the railroad of the party of the first part, between the city of Louisville, in the State of Kentucky, and the city of Nashville, in the State of Tennessee, or in either said city, being about one hundred and eighty-five miles long. (2.) The Bardstown branch of said road, extending from the said main line to and within the village of Bardstown, in the State of Kentucky, being about seventeen miles long. (3.) The Memphis branch of said road, extending from said main line to the State line of Kentucky (toward Memphis, in Tennessee), being about forty-seven miles in length. (4.) The Lebanon branch of said road, extending (as now completed) from said main line to and into the town of Crab Orchard, a distance of about eighty-five miles; and also said branch, as the same shall be extended or completed, until it shall reach the Tennessee State line, being in entire length about one hundred and seventy-two miles. (5.) The Richmond branch of said main line (and being also a branch of said Lebanon branch), extending, and as the same shall be extended, from and in the town of Stanford to and into the town of Richmond, in the State of Kentucky, a distance of about thirty-three (33) miles, including in and with the railroad and branches so granted and mortgaged the land and other real estate already or to be acquired and used for the purpose of said road or branches respectively, within the limits designated, all buildings and other erections made or to be made thereon, the rails and the proper rolling stock, equipment, tools, machinery used or to be used thereon or therein, all appurtenances of any portion of said property, the income, and generally the rights, privileges, and franchises now of the party of the first part, or at any time to be acquired or received for the purpose of the use or enjoyment of said road or branches or therefrom, also all fuel on hand at the date of any default.

5. *To have and to hold* the same unto the said parties of the second part, and to the survivor of them, and to their and his successor and successors, *In trust*, and upon the following expresss conditions, to wit: So long as said party of the first part, its successors or assigns, shall not make default in the payment of either interest or principal on any of the

aforesaid bonds or coupons, as the same shall respectively become due and payable, and shall faithfully perform the conditions of said bonds, and of this deed, said party of the first part, its successors and assigns, shall be entitled to retain the possession of the road, and other property, rights, and franchises hereby conveyed, and use, enjoy, and operate the same, and to receive and enjoy the income thereof, as authorized by law.

And said party of the first part does covenant and agree, for itself, its successors, and assigns, to and with said party of the second part, the successors and successor and survivors, as follows : That said party of the first part will pay all taxes, charges, rates, levies, and assessments imposed, assessed or levied, or which may hereafter be imposed, assessed, or levied, upon all or any part of the property or franchises hereby conveyed or attempted to be conveyed, and will take care of and preserve the same, and at its own cost will do all acts necessary to be done to keep valid the lien hereby created upon all the property and franchises hereby conveyed, or intended to be conveyed or covered, and that said party of the first part and its successors will at any time, and from time to time, execute, acknowledge, and deliver, under its corporate seal, in due form, to said parties of the second part, their survivor or survivors, successor or successors, all such other assurances, deeds, mortgages, or other instruments of writing, and will do all such other acts and things, as may be reasonably requested, for the better carrying into effect the true intent and meaning of these presents, or for rendering any of said railroad, within said limits, not completed, or property to be acquired, a good and valid part security for said bonds and coupons, as effectually as if now owned, completed, and possessed by the party of the first part, and embraced and enumerated in this mortgage.

6. *In case* of a local change in the line or erections of any part of said road, the parties hereto may join in releasing the said land, or erections and premises, that may be abandoned, and not longer required for the purposes of the party of the first part ; provided, that before, or at the same time, additional land or erections, acquired or made, of at least equal value, shall, by the party of the first part, be duly conveyed and assured to the party of the second part, in aid of the security intended by this mortgage.

7. *The party* of the first part hereby declares, that the only lien or incumbrance on any of the property, rights, income, or franchises hereby mortgaged, is that created to secure two millions four hundred and fifty thousand dollars in amount of its outstanding bonds secured by mortgage.

And said party hereby covenants with the party of the second part, their survivors and successors; (1) That no more bonds, or other evidences of debt, shall at any time be issued under or secured by either of said prior mortgages. (2) That the party of the first part will pay, take up, and cancel (or take up by exchange for bonds issued under this mortgage) the several said prior bonds, before or as soon as they shall become due, and will pay the interest thereon as it shall mature (3) That of the eight thousand bonds authorized to be issued thereunder, two thousand five hundred thereof, or such number as shall be necessary to secure such result, shall be issued only for the purpose of taking up by way of exchange, or to raise money to purchase, pay, and take up and cancel said $2,450,000 of outstanding bonds; and the proceeds of said $2,500,000 of bonds, or any part thereof, that may be sold to raise money to take up any part of said prior bonds (to the extent needed to take up the same, or that the same may be outstanding), shall not be used for any other purpose than to take up said outstanding bonds. (4) That when any one of said outstanding bonds is purchased or paid, or taken up by way of exchange, the same shall be canceled, and no new bond shall be issued in its place. (5) And, as soon as it shall be practicable, each said prior mortgage shall be canceled and discharged of record. (6) And it is the distinct understanding of the party of the first part, and its positive covenant, that under no pretense, and in no way, directly or indirectly, shall more than eight millions, in the aggregate amount at par, of its bonds, or other evidences of its debt, be issued, and at any one time outstanding, under this and all said mortgages; and that only said two millions four hundred and fifty thousand dollars shall at any time be secured by a lien prior to this mortgage.

8. *And* the party of the first part further covenants with the party of the second part, their survivors and successors, to pay to them, in the city of New York, on the first day of January of each year, beginning with the year one thousand eight hundred and seventy-one, a sum of money which shall be equal to one-half of one per cent. of the amount of bonds issued, and then or in any year thereafter outstanding under this mortgage, which said sums to be paid shall be a sinking fund to be used by the trustees to purchase any of said eight millions of bonds so issued, at the rates at which they can be cheapest purchased in the public stock market of the city of New York; but no bonds shall be purchased at a rate at or above par. Whenever, on the arrival of said day for payment into said sinking fund, said party of the second part shall, by reason of having been unable to purchase

bonds below par, have expended an amount of such fund equal to one required annual payment into such fund, no payment need be made for such year; and if, for such reason, there shall be, unexpended, in such fund, a sum less than such required annual payment, no more need be paid for that year than shall be required to raise said fund to an amount equal to a full required payment of that year. The trustees shall give receipts for all money paid into said fund, shall keep all the money thereof, not so used, invested in some trust company in the city of New York, at the best obtainable rate of interest, for the benefit of the fund, pending its use, and shall cancel, and deliver to the party of the first part, all bonds therewith purchased, and no new bonds shall be issued in place of any so purchased.

And it is further agreed, That in the event the said party of the first part shall fail, for the space of ninety days, to pay the coupons for the semi-annual interest on any of the said bonds, as the same may become due, after presentation and demand thereof, then, and in that case, the whole principal sum mentioned, in each and all of said bonds, shall forthwith become due and payable, and the lien hereby created, for the security and payment thereof, may at once be enforced; and thereupon, or on failure to pay any such aforesaid bonds as they shall become due, or to pay any such sums as shall become due and payable to the sinking fund, said parties of the second part, their survivor, successor, or successors, shall, on the request in writing of the holders of a majority of the bonds hereby secured, as a court may order or authorize, take possession of the road, franchises, and other property hereby conveyed, by themselves or their agents, or by a receiver to be appointed, and may use and operate the same, and receive the earnings and the income therefrom; and may institute and maintain foreclosure proceedings in any court having jurisdiction, and have whatever is herein mortgaged, sold and conveyed by the direction of the court; and out of the proceeds from said sale, or from the income and earnings of said property, rights, and franchises (after deducting the expenses incurred in and about said proceeding, the execution of this trust, the preservation and operation of said property, and reasonable compensation to said trustees, their agents and attorneys, the payment of all taxes, levies, and assessments upon said property, and upon the income therefrom, all damages to which said parties of the second part may become liable by reason of the management of said property, and any other proper charge or expense not caused by the willful personal misconduct of said parties of the second part, the survivor,

successor, or successors), shall pay said bonds, hereby secured, or so many of them as shall then be outstanding, together with all arrears of interest then due thereon (or on any prior bonds), paying over the surplus, if any, to said party of the first part, its successors or assigns, or, in case the same be not sufficient to pay all said bonds and interest, then shall distribute the same ratably among the holders of such bonds; provided, that if said company shall, at any time before a sale, and before said bonds become due by the terms thereof, pay all semi-annual interest then matured on any aforesaid bonds, and all said expenses, compensation, taxes, and damages, that then the principal and unmatured interest on such bonds shall not be deemed due by reason of any previous failure to pay interest, and no sale of the property for said failure shall be made.

And provided further, That no sale of the property shall be made for a mere failure to pay into the sinking fund, as herein required. It is further agreed, that upon payment, at any time, in full of the said bonds and interest thereon, and the compensation and expenses of said trustees, this deed shall become void, and the estate and title hereby granted shall revert to, and vest in, said party of the first part, its successors and assigns, without other conveyance thereof, and it shall be vested with and deemed in possession thereof without any entry or other act therefor; and said party of the first part further agrees, that it will indemnify and save harmless the said parties of the second part, their survivor, successor or successors, against all loss and damage to which they, or either of them, may be subjected by the exceution of this trust, or by the operation and management of the property hereby conveyed, not caused by the personal misconduct or neglect of such party of the second part, their survivor or successor. And it is further agreed, that in the event of the declension, resignation, death, incapacity, or other disability of any trustee of the second part, or their successor or successors, the remaining or surviving trustee or trustees, or successor or successors, may, with the consent in writing of the then president of the said company of the first part, appoint, by an instrument in writing under the hand and seal of such surviving or remaining trustee or successor (which shall be acknowledged and recorded in the offices in which this deed is required by law to be recorded), some competent person to fill such vacancy; and the person so appointed, shall possess the powers and incur the obligations of an original party of the second part hereto, and until such appointment, and notwithstanding such vacancy, such surviving or remaining trustee or trustees, or successor, shall have full power to execute all the trusts hereby created,

and his or their acts shall be as valid as if done by all the parties of the second part hereto; and in case of such appointment, said party of the first part covenants to make all such deeds and other instruments as shall be necessary to enable said party so appointed to execute the trusts hereby created, as fully and completely as if such appointed party had been originally one of the parties of the second part hereto.

And this indenture further witnesseth, That the parties of the second part do hereby accept the aforesaid trusts, and agree to execute them upon the following terms and conditions, which are mutually agreed to by the parties, viz.: That neither trustee shall be answerable for the acts, omissions, or defaults of the other to which he does not give his assent, that each shall be answerable for gross negligence and willful defaults only; that the trustees, or either of them, may employ or advise with legal counsel, and that the proper expenses thereof, and all the personal expenses of the trustees about the discharge of the trust, and all other reasonable and proper charges and expenses of the trustees, including their compensation, shall be paid by the party of the first part as they are incurred, or otherwise, out of the trust estate on which they are hereby charged; that neither trustee shall be bound to pay or discharge any prior incumbrances on said mortgaged property or estate, nor any part thereof, without being first furnished with the money necessary to make such payments by the persons so requiring, or otherwise; that they shall not be required to act in the execution of these trusts except at their own option, unless requested in writing by the holders of a majority of the outstanding bonds hereunder, nor unless furnished with such funds as their counsel shall reasonably advise them are necessary and proper to enable them to commence proceedings, and also with a responsible indemnity or sufficient agreement to pay the current accruing expenses, obligations, and liabilities which they may incur by reason of so acting, and their proper compensation in so doing; that they may employ agents or attorneys in fact, to act for them whenever required to act themselves, and that all the covenants and agreements herein contained or implied, may be specifically enforced by any court of competent jurisdiction.

In witness whereof, The party of the first part has caused its corporate seal to be hereon impressed, and this instrument to be subscribed by its president and secretary, and the said trustees subscribe the same to signify their acceptance of said trusts, this first day of September, one thousand eight hundred and sixty-eight.

Exhibit No. 5.

MORTGAGE FROM THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY TO HENRY F. VAIL, NEW YORK, AND JOHN B. SMITH, KENTUCKY, TRUSTEES. DATED NOVEMBER 1, 1873.

THIS INDENTURE OF MORTGAGE, Made on the first day of November, eighteen hundred and seventy-three, by and between the Louisville and Nashville Railroad Company, a corporation created, organized, and existing by and under the laws of the State of Kentucky, and likewise existing and possessing chartered rights and privileges by and under the laws of the State of Tennessee, party of the first part, and Henry F. Vail, of the city of New York, and John B. Smith, of the city of Louisville, Kentucky, trustees, parties of the second part, witnesseth as follows :

1. *Whereas*, The party of the first part needs and desires to raise money, to be used for the purposes authorized to it by the laws of the States of Kentucky and Tennessee, and to that end the president and directors of said company, at a meeting duly held on the 2d day of October, A. D. 1873, adopted the following resolutions :

"*Resolved*, That the president of this board have prepared and executed the coupon bonds of the company, not to exceed in amount four millions of dollars; three thousand of the bonds to be for one thousand dollars each, and two thousand of them to be for five hundred dollars each, and numbered from 1 to 5,000, to bear date the 1st day of November, 1873, and payable on the 1st day of November, 1883, in gold coin of the United States; to be signed by the president and countersigned by the secretary, with the seal of the company affixed; to bear interest at the rate of seven per cent. in like gold coin, payable semi-annually on the 1st day of May and November in each year, upon the presentation and delivery of the proper coupons at the Agency of the company in the city of New York; and that he execute in the name and on behalf of the company, to be countersigned and sealed as aforesaid, a mortgage of even date with said bonds on the property, rights, and franchises of the company in the States of Kentucky and Tennessee, subject to the existing mortgage of the company and the Memphis and Ohio Railroad Company on the same, to secure the payment of the principal and interest of said bonds, containing such terms and stipulations as may be deemed best to secure the same, as provided by the laws of Kentucky and Tennessee.

"The coupons to be attached to said bonds may be either signed by the secretary or authenticated by the engraving of his proper signature thereto, which latter shall be sufficient to bind the company, and the said bonds are to be numbered from 1 to 5,000 inclusive.

2. *And whereas*, In pursuance of said resolution and authority of its directors and stockholders, and of the powers conferred upon it by law, the party of the first part has executed under its corporate seal and signed by its president and secretary, and made ready for sale, and is about to issue and negotiate five thousand of its coupon bonds, numbered as aforesaid, three thousand of which are for one thousand dollars each, and two thousand for five hundred dollars each.

Each of said bonds bearing even date herewith (and having thereto respectively attached coupons for interest, consecutively and correspondingly numbered and dated, and authenticated by the engraving of the proper signature thereto of the secretary of said company as to each set of coupons), which bonds and coupons are in the form following, to wit:

[FORM OF BOND.]

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY SEVEN PER CENT. LOAN.

$1,000. *Principal and Interest in Gold.* $1,000.

No. ———.

The Louisville and Nashville Railroad Company hereby acknowledges itself indebted to Henry F. Vail, of the city of New York, and John B. Smith, of Louisville, Kentucky, in the sum of one thousand dollars of the gold coin of the United States for money borrowed, which sum it hereby promises to pay to them or the bearer hereof in such gold coin on the first day of November, in the year eighteen hundred and eighty-three, at the agency of the said company in the city of New York, and also to pay at the same place interest upon such principal sum in the meantime semi-annually, on the first day of May and November in each year until maturity, at the rate of seven per cent. per annum in like gold coin, according to the coupons for such interest attached hereto, upon the due presentation and surrender of such coupons. This bond is one of a series of five thousand bonds of like tenor and date, numbered consecutively from No. 1 to No. 5,000, inclusive, and amounting in the aggregate to $4,000,000—3,000 of such bonds being for $1,000 each, and 2,000 of the same for $500 each, issued or to be issued by the same company for money borrowed or to be borrowed thereon, and all of which are equally secured

by a mortgage of even date herewith upon all the railroads belonging to the said company in the States of Kentucky and Tennessee, with the rolling stock and appurtenances thereof, and the rights and franchises belonging thereto, duly executed by the said company to the said Henry F. Vail and John B. Smith, as trustees, and duly recorded in the respective counties of those States through which the railroads belonging to the said company run, and which is subject only to the existing mortgages for $8,000,000, £700,000 sterling, and £500,000 sterling, which respectively cover different portions of the railroads and property of the said company.

This bond shall not be valid until the certificate hereon indorsed shall be signed by said trustees.

In witness whereof, said company has caused this bond to be signed by its president and secretary, and its [SEAL.] corporate seal to be hereto affixed, at its office in the city of Louisville, this 1st day of November, 1873.

———, *Secretary.* ———*President.*

This bond may be registered at the office of the company, or at its agency in the city of New York, at the option of its holder; and thereafter, unless at any time registered payable to bearer, will be payable only to such person as on this bond shall appear from time to time to be the last duly registered transferee or owner thereof.

And the said bonds for five hundred dollars each are the same as the foregoing, except as to the amount.

[FORM OF COUPON.]

The Louisville and Nashville Railroad Company hereby promises to pay to the bearer hereof, at its agency in the city of New York, the sum of thirty-five dollars in gold coin of the United States on the 1st day of ——, 18—, for six months' interest due on that day upon its bond, No. ——, dated November 1, 1873.

No. ———. ———, *Secretary.*

And the form of the coupons on the bonds for five hundred dollars is the same as the foregoing, except as to the amount.

And whereas, The form of trustees' certificate to be indorsed on the said bonds and signed by the said trustees is to be in substance as follows, viz.:

We certify that this is one of the within-named five thousand bonds, dated November 1, 1873, issued under and entitled to the security of the mortgage of even date herewith, from the Louisville and Nashville Railroad Company to Henry F. Vail and John B. Smith as trustees.

———,

———,

Trustees.

Now this indenture witnesseth, That in order to secure the due and punctual payment of the before-mentioned five thousand bonds and the said coupons for interest thereon, according to the tenor and effect of such bonds and coupons respectively, to the persons or corporations who at the time being shall be the owners and holders or lawfully entitled to demand and receive payment of the same respectively, equally in respect of all the said bonds without preference or priority of one over another by reason of priority in the time of issue or negotiation thereof, or otherwise, and in consideration of the premises and of one dollar paid by the parties of the second part to the party of the first part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the Louisville and Nashville Railroad Company, party of the first part, has granted, conveyed, and mortgaged, and does hereby grant, convey, and mortgage, and does transfer and set over unto the said parties of the second part, and their successor or successors, as trustees, for the common and equal benefit of all those who may be the holders of such bonds: (1) The main line of the railroad of the party of the first part between the city of Louisville, in the State of Kentucky, and the city of Nashville, in the State of Tennessee, and in said cities respectively, the same being about one hundred and eighty-five miles long; (2) The Bardstown branch of said railroad, extending from said main line to and within the town of Bardstown, in the State of Kentucky, the same being about seventeen miles long; (3) The Lebanon or Knoxville branch of said railroad, extending (as now completed) from said main line to and in the town of Livingston, in the State of Kentucky, a distance of about one hundred and ten miles, and also said branch as the same shall be extended or completed, until it shall reach the Tennessee State line, being in entire length about one hundred and seventy-two miles; (4) The Richmond branch of said main line (and being also a branch of said Lebanon or Knoxville Branch), extending from and in the town of Stanford to and into the town of Richmond, in the State of Kentucky, a distance of about thirty-three miles; (5) The Memphis branch of said railroad, extending from said main line to and into the city of Memphis, in the State of Tennessee, which includes all that part of said first party's railroad, from its main line to and into the city of Memphis, in the State of Tennessee, the line dividing the States of Kentucky and Tennessee, in the direction of the city of Memphis, a distance of about forty-seven miles, and that part of said first party's railroad extending from said dividing line between the States of

Kentucky and Tennessee to and into the town of Paris, in the State of Tennessee, a distance of about eighty-three miles, the same being formerly known as the Memphis, Clarksville and Louisville Railroad, and also that part of said first party's railroad extending from and into said town of Paris to and into the city of Memphis, in the State of Tennessee, a distance of about one hundred and thirty-one miles, and formerly known as the Memphis and Ohio Railroad; with all the roadway and tracks of said railroads and branches before mentioned and described and mortgaged, and the rails thereon laid or to be laid, and other structures thereon; and all the lands, rights, easements, privileges, and franchises, whether in fee or leasehold, or otherwise acquired or to be acquired by the said party of the first part for the purposes of or in connection with the said railroads and branches respectively before mentioned and described and hereby mortgaged; and all the depot grounds, and the sites used or intended to be used for stations, depots, car-houses, engine-houses, machine-shops, offices, or other buildings or structures of or appertaining to said railroads and branches before mentioned and described respectively and hereby mortgaged; with all the buildings, structures, and improvements whatsoever erected and placed or to be erected or placed, upon any or all of such grounds or sites; and all bridges, fences, wharves, piers, buildings, and other improvements whatsoever belonging to or appertaining to, or used or intended to be used for the purposes of or in connection with, the said lines of railroad and branches respectively before mentioned and described and hereby mortgaged; and also all locomotives and tenders, passenger-cars, freight-cars, baggage-cars, and other cars, and other equipments and rolling-stock whatsoever, and tools, machinery, and implements belonging or appertaining to, or used or intended to be used for the purposes of said railroads and branches respectively before mentioned and described and hereby mortgaged, or any part of the same, or for the working or operation thereof, or for the reparation of such railroads or branches, or their appurtenances or rolling-stock or equipment; and likewise all such property and effects as shall be hereafter acquired by the said company for the use of said railroads and branches before mentioned and described, and hereby mortgaged, or for any of the uses or purposes aforesaid; and likewise all other the real and leasehold estates and properties, rights, easements, and privileges whatsoever situate or located in the respective States of Tennessee and Kentucky now belonging to the said party of the first part, or which shall be hereafter acquired by it for the uses and purposes of said

railroads and branches respectively before mentioned and described and hereby mortgaged, or any part thereof; an also all the appurtenances whatsoever belonging or appertaining to the said railroads and branches respectively hereby mortgaged; and all the rights, privileges, and franchises whatsoever which the said party of the first part is possessed or or entitled unto, or which the said party of the first part shall at any time hereafter acquire or become possessed of or entitled unto, for or in connection with the use, enjoyment, maintenance, or operation of said railroads and branches respectively before mentioned and described and hereby mortgaged, or any part thereof, and also all raw material of all kinds and fuel intended for the use of or upon said railroads and branches respectively before mentioned and described and hereby mortgaged, which may be on hand now or at the time of any default in the due and punctual payment of any of the principal or interest hereby secured or intended so to be; and the income, tolls, freights, rents, and profits of said railroads and branches and other property hereinbefore mentioned and described and hereby mortgaged, from and after any such default. But the lien created to secure the payment of said bonds and coupons by this indenture of mortgage is subordinate to the liens created by a consolidated mortgage on so much of said company's property, income, rights, and franchises as are within the State of Kentucky, and so much thereof within the State of Tennessee as extends from the line dividing the States of Kentucky and Tennessee where the same is crossed by the said company's main line of railroad to and into the city of Nashville. Made and executed by the said party of the first part on the 1st day of April, 1868, to James Punnett and Junius B. Alexander, as trustees, to secure the payment of eight thousand bonds of one thousand dollars each, with coupons attached, and numbered consecutively from one to eight thousand, inclusive, and duly recorded in the proper offices in the cities of Louisville, Kentucky, and Nashville, Tennessee, and in the counties through which the main line and branches of said company's railroad pass. And also the lien created by an indenture of mortgage on so much of said company's railroad line and appurtenances, rights, franchises, income, etc., in the State of Tennessee, extending from the city of Memphis to the town of Paris in said State, and formerly known as the Memphis and Ohio Railroad; made and executed by the Memphis and Ohio Railroad Company, on the first day of June, 1871, to John B. Smith and Junius B. Alexander, as trustees, to secure the payment of thirty five hundred bonds for one thousand dollars or two hundred pounds sterling each, with coupons at-

tached, and numbered consecutively from one to thirty-five hundred, inclusive, and duly recorded in the proper offices in the counties in which said railroad lies; and also to the lien created by an indenture of mortgage on so much of said company's railroad line and appurtenances, rights, franchises, income, etc., in the State of Tennessee, as extends from the town of Paris to the line which divides the States of Kentucky and Tennessee at the point where the same is crossed by the Memphis branch of said company's railroad line, the same being formerly the Memphis, Clarksville and Louisville Railroad, made and executed by the party of the first part on the 15th day of July, 1872, to John B. Smith and Junius B. Alexander, as trustees, to secure the payment of twenty-five hundred bonds, each for two hundred pounds sterling money of Great Britain, and numbered consecutively from one to twenty-five hundred, inclusive, and duly recorded in the proper offices in the city of Louisville and in the counties in which said railroad lies.

To have and to hold all and singular the said premises, properties, and things, and rights and privileges and franchises, with the appurtenances, unto the said parties of the second part, as trustees as aforesaid, and their heirs and assigns forever, and to their successors in said trust, but as trustees; nevertheless, for the use, benefit, and security of the several persons who shall be or become the owners and holders of or lawfully entitled to demand and receive payment of the said five thousand bonds and the said coupons attached thereto, equally *pro rata*, and without preference or priority of one over another; and upon and for the trusts and uses and purposes, and upon and subject to the conditions and provisions hereinafter expressed and declared, that is to say:

First. So long as the said party of the first part, its successors or assigns, shall not make default in payment of either interest or principal on any of the aforesaid bonds or coupons, as the same shall respectively become due and payable, and shall faithfully perform the conditions of said bonds, and the stipulations and conditions of this indenture, said party of the first part, its successors and assigns, shall be entitled to retain the possession of the railroad and other property, rights, and franchises hereby conveyed, and use, enjoy, and operate the same, and to receive and enjoy the income thereby, as authorized by law.

Second. And said party of the first part does covenant and agree for itself, its successors and assigns, to and with said parties of the second part, their successors and successor and survivors, as follows: That said party of the first part will pay all taxes, charges, rates, levies, and assessments

imposed, assessed, or levied, or which may hereafter be imposed, assessed, or levied upon all or any part of the property or franchises hereby conveyed or attempted to be conveyed, and will take care of and preserve the same, and at its own costs will do all acts necessary to be done to keep valid the lien hereby created upon all the property and franchises hereby conveyed or intended to be conveyed and covered; and that said party of the first part and its successors will, at any time, and from time to time, upon request, execute, acknowledge, and deliver, under its corporate seal in due form, to said parties of the second part, their survivor or survivors, successor or successors, all such other assurances, deeds, mortgages, or other instruments of writing, and will do all such other acts and things as may be reasonably requested for the better carrying into effect of the true intent and meaning of these presents, and for effectuating, completing, and confirming the lien and operation of this mortgage, as an effectual security for all the said five thousand bonds and the coupons accompanying the same, upon all and singular the properties, estates, rights, interests, and franchises hereinbefore mortgaged, or purporting or intended so to be, including as well such of the same as the said company shall hereafter acquire or become possessed of, or entitled unto, as what is now owned or possessed by said company.

Third. And the said party of the first part, for itself and its successors, doth hereby further covenant, grant, and agree to and with the said parties of the second part, as trustees as aforesaid, and for and on behalf of all the future holders of any of the said five thousand bonds hereby secured or intended so to be, and to and with the successors of the parties of the second part in the trust hereby created, that the said party of the first part is now seized and lawfully and absolutely entitled to and possessed as owner of the above mentioned railroads and branches, with all the appurtenances thereof, and all other the things and rights above described and hereby mortgaged or intended so to be, and hath good right, full power, and lawful authority to convey and transfer the same in mortgage to the said parties of the second part, as trustees as aforesaid, and to their successors, heirs, and assigns, in the manner and to the effect aforesaid, for the benefit and security of the holders of the said bonds for four millions of dollars, hereby secured or intended so to be; and that the said party of the first part and its successors shall and will warrant and defend the same unto the said parties of the second part and their successors and assigns, according to the purport and intent of the said

transfer and conveyance thereof to them in mortgage, against the claims and demands of all other person or persons whomsoever lawfully claiming or to claim the same, and that free and clear of and from all former and other grants, conveyances, liens, charges, or incumbrances whatsoever, except as hereinbefore stated.

Fourth. In case of a local change in the line or erections of any part of said railroads or branches, the parties hereto may join in releasing the said l nd or erections and premises that may be abandoned and not longer required for the due maintenance and operation of said railroads, or for the purposes of the party of the first part: *Provided*, that before or at the same time additional land or erections acquired or made, of at least equal value, shall by the party of the first part be duly conveyed and fully assured to the parties of the second part in aid of the security intended by this mortgage.

Fifth. And it is further agreed that in the event of the said party of the first part failing for the space of ninety days to pay the coupons for the semi-annual interest on any of the said bonds issued under and secured by this mortgage, as the same may become due, after the presentation and demand thereof, then and in that case the whole principal sum mentioned in each and all of said bonds shall forthwith become due and payable, and the lien hereby created for the security and payment thereof may at once be enforced; and said parties of the second part, their survivor, successor or successors, shall, on the request in writing of the holders of a majority of the then outstanding bonds hereby secured, as a Court may order or authorize, take possession of the roads, franchises, and other property hereby conveyed, by themselves or their agents, or by a receiver to be appointed, and may use and operate the same, and receive the earnings and income therefrom, and may institute and maintain foreclosure proceedings in any Court having jurisdiction, and have whatever is herein mortgaged, sold, and conveyed by the direction of the Court; and out of the proceeds from said sale, or from the income and earnings of said property, rights, and franchises (after deducting the expenses incurred in and about said proceedings, the execution of this trust, the preservation and operation of said property, and reasonable compensation to said trustees, their agents and attorneys, the payment of all taxes, levies, and assessments upon said property and upon the income therefrom, all damages to which said parties of the second part or their successors may become liable by reason of the management of said property, and any other proper charge or expense not caused by the willful personal misconduct of said parties

of the second part, their survivor, successor or successors) shall pay said bonds hereby secured, or so many of them as shall then be outstanding, together with all interest then due or owing thereon, paying over the surplus, if any, to said party of the first part, its successors or assigns; or in case the same be not sufficient to pay all said bonds and interest, then shall distribute the same with *pro rata* equality among the holders of all such bonds and coupons: *Provided*, that if said company shall, at any time before a sale and before said bonds become due by the terms thereof, pay all semi-annual interest then matured on any aforesaid bonds, and all said expenses, compensation, taxes, and damages, that then the principal and unmatured interest on such bonds shall be deemed not due by reason of any previous failure to pay interest, and no sale of the property for said previous failure shall be made.

Sixth. It is further agreed that upon the payment at any time in full of the said bonds issued under and secured by this mortgage, and the interest thereon, and the compensation and expenses of said trustees, this deed shall become void, and the estate and title hereby granted shall revert to and vest in said party of the first part, its successors and assigns, without other conveyance thereof; and it shall be vested with and deemed in possession thereof without any entry or other act therefor; and said party of the first part further agrees that it will indemnify and save harmless the said parties of the second part, their survivor, successor or successors, against all loss and damage to which they or either of them may be subjected by the execution of this trust, or by the operation and management of the property hereby conveyed, not caused by the personal misconduct or neglect of such parties of the second part, their survivor or successor.

And it is further agreed that, in the event of the declension, resignation, death, incapacity, or other disability of any trustee of the second part, or their successor or successors, the remaining or surviving trustee or trustees, or successor or successors, may, with the consent in writing of the then president of said company of the first part, or of any corporation which, as its successor, shall be the owner of the railroad hereby mortgaged, appoint, by an instrument in writing, under the hand and seal of such surviving or remaining trustee or successor (which shall be acknowledged and recorded in the office of land records in the several counties through which the railroad hereby mortgaged runs, or in which this deed is by law to be recorded), some competent person to fill such vacancy, and the person so appointed shall possess the powers and incur the obligations of

an original party of the second part hereto; and until such appointment, and notwithstanding such vacancy, such surviving or remaining trustee or trustees or successor shall have full power to execute all the trusts hereby created, and his or their acts shall be as valid as if done by all the parties of the second part hereto; and in case of such appointment said party of the first part covenants to make, upon request, all such deeds and other instruments as shall be necessary or appropriate to enable said party so appointed to execute the trust hereby created, as fully and completely as if such appointed party had been originally one of the parties of the second part.

And this indenture further witnesseth, That the parties of the second part do hereby accept the aforesaid trusts, and agree to execute them upon the following terms and conditions, which are mutually agreed to by the parties, viz: That neither trustee shall be answerable for the acts, omissions, or defaults of the other to which he does not give his assent; that each shall be answerable for gross negligence and wilful defaults only; that the trustees, or either of them, may employ or advise with legal counsel, and that the proper expense thereof, and all the personal expenses of the trustees about the discharge of the trust, and all other reasonable and proper charges and expenses of the trustees, including their compensation, shall be paid by the party of the first part as they are incurred, or otherwise, out of the trust estate on which they are hereby charged; that neither trustee shall be bound to pay or discharge any prior charges or incumbrances on said mortgaged property or estate, nor any part thereof, without being first furnished with the money necessary to make such payments by the persons so requiring, or otherwise; that they shall not be required to act in the execution of these trusts except at their own option, unless requested in writing by the holders of a majority of the outstanding bonds hereunder, nor unless furnished with such funds as their counsel shall reasonably advise them are necessary and proper to enable them to commence proceedings, and also with a responsible indemnity or sufficient agreement to pay the accruing expenses, obligations, and liabilities which they may incur by reason of so acting, and their proper compensation in so doing; that they may employ agents or attorneys in fact to act for them whenever required to act themselves, and shall not be personally responsible for the neglect or default of any such agent or attorney in fact appointed in good faith; and that all covenants and agreements herein contained or implied may be specifically enforced by any court of competent jurisdiction.

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In witness whereof, The party of the first part has caused its corporate seal to be hereunto affixed, and this instrument of writing to be subscribed by its president and secretary, and the said trustees subscribe the same to signify their acceptance of said trust, the day and year first above written.

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE,

[*In Equity.*]

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the Louisville & Nashville Railroad Company,

vs.

The LOUISVILLE, NASHVILLE & GREAT SOUTHERN RAILROAD COMPANY.

The answer of Calvin Amory Stevens, to the cross bill filed by John B. Smith, admitted as a defendant by stipulation :

This complainant, respondent to the Cross-bill which he has consented that John B. Smith might file subject to conditions specified in a certain stipulation, for answer to said Cross-bill or so much and such parts thereof as he is advised it is material for him to answer unto, but without waiving any benefit or right of exception thereto, that can or may be had to the same on account of the errors, uncertainties and imperfections therein contained.

Admits the existence of the several Statutes, public documents, and records, and private writings set out or referred to in the Cross-bill, but for greater certainty as to the contents thereof, prays leave to refer to the said documents upon the trial.

Respondent denies each and every allegation in the said Cross-bill with actual knowledge of which he is charged, and as to the other matters of fact alleged affirmatively in the said Cross-bill, except in the particulars above admitted, respondent has no knowledge or information, and therefore demands strict proof of the same.

And the complainant further says, that the telegraphic letter of December 11, 1877, addressed by him to the Governor of Tennessee, and laid before its Legislature, was written for his signature and by Richard T. Wilson, President of the Memphis and Charleston Railroad Company, and by him procured to be signed by this complainant, and by said Wilson sent to said Governor at a time when this complainant was wholly ignorant of the substitutions now claimed to have been effected, and by which it is alleged that the liens upon the railroads of the defendant company and other companies in the State of Tennessee have been satisfied, and that said telegraphic letter relates to bonds of the State of Tennessee, then held by this complainant, of which only a very small minority in amount were secured, or are now claimed to have been secured by any lien whatever.

Respondent is advised that he need not answer or controvert in this pleading the various conclusions of law and presumptions set forth in the Cross-bill, but that the same are best answered by the language of the Statutes of Tennessee.

Wherefore this respondent prays to be hence dismissed with his reasonable costs.

E. L. ANDREWS,
GEORGE HOADLY,
Solicitors and of Counsel for Complainant.

UNITED STATES OF AMERICA,
Southern District of New York. } ss.:

On this 28th day of November, A. D. 1879, before me personally appeared Calvin Amory Stevens, who being duly sworn, says that the matters and things stated in the foregoing answer are true, so far as the same are stated of his own knowledge, and so far as stated on information and belief he believes it to be true.

[L. S.] WILLIAM H. DE LANCEY,
Notary Public Westchester County,
Acting in New York County under, and by virtue of Chapter 807, of the Laws of 1873, of the State of New York.

1

Replication of John B. Smith.

U. S. CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

[*In Equity.*]

2

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to The LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

vs.

3

THE LOUISVILLE, NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

The repliant, saving and reserving to himself all and all manner of advantage of exceptions to the manifold insufficiencies of the said answer, for replication thereunto, says that he will aver and 4 prove his said cross-bill to be true, certain and suffi-

5 cient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things the repliant is and will be ready to aver and prove as this Honorable Court shall direct, and humbly pray as in and
6 by his said cross-bill he has already prayed.

MATTHEWS, RAMSEY & MATTHEWS,
Solicitors for Defendants.

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UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

[*In Equity.*]

CALVIN AMORY STEVENS, EUGENE KELLY, JOHN T. TERRY and PETER GEDDES, on behalf of the Holders of Internal Improvement Bonds of Tennessee issued to the LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

versus

THE LOUISVILLE, NASHVILLE and GREAT SOUTHERN RAILROAD COMPANY.

To the Honorable the Judges of the Circuit Court of the United States for the Sixth Judicial Circuit and Middle District of Tennessee :—

The Petition of EUGENE KELLY, JOHN T. TERRY and PETER GEDDES respectfully shows to your Honors :

That your petitioners are owners and holders of Internal Improvement Bonds issued on account of the Louisville,and Nashville Railroad Company for the construction and equipment of its said road.

Your petitioners, said bonds are identified and numbered according to the description in the bill in this suit, and have the like number of overdue and unpaid coupons attached thereto. The scheduly hereto attached and prayed to be taken as a part of this petition exhibits their ownership and holdings of said bonds.

Your petitioners likewise constitute a majority of the Committee of Tennesee Bondholders, representing twenty-five (25) owners and holders of Internal Improvement Bonds of Tennessee issued to the Louisville and Nashville Railroad Company owning and holding fifty-six (56) bonds issued to said Company by the State of Tennessee.

Your petitioners desire to unite in the prosecution of the Bill herein, and to be joined as co-complainants according to the frame of the suit and the course and practice of this Court, with leave to amend the title and formal allegations of the Bill to conform to this petition. A copy of said amendments is hereto attached.

And your petitioners accordingly pray for the foregoing relief, and such other order as may be appropriate in the premises.

EDWARD L. ANDREWS,

Solicitor and of Counsel for Petitioners.

UNITED STATES OF AMERICA, } ss.:
Southern District of New York. }

On this 19th day of August, A. D. 1879, before me personally appeared Eugene Kelly, John T. Terry and Peter Geddes, who being duly and severally sworn, says each for himself, that the matters and things stated in the foregoing petition are true so far as the same are stated of his own knowledge, and so far as stated on information and belief he believes them to be true.

WILLIAM H. DELANCEY,
Notary Public,
Westchester County, acting in New York County under and by virtue of Chapter 807 of the Laws of 1873, of the State of New York.

13 UNITED STATES CIRCUIT COURT.

SIXTH JUDICIAL CIRCUIT.

MIDDLE DISTRICT OF TENNESSEE.

[*In Equity.*]

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14 CALVIN AMORY STEVENS, EUGENE KELLY, JOHN T. TERRY and PETER GEDDES, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

versus

15 THE LOUISVILLE, NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

On the foregoing verified petition and on motion of Edward L. Andrews, Solicitor for complainants,

It is ordered that EUGENE KELLY, JOHN T. TERRY and PETER GEDDES be and the same are hereby admitted as co-complainants in this suit, and the formal amendments attached to the said petition are
16 hereby allowed.

(Signed) W. STRONG, *J.*

Aug. 20, 1879.

Middle District of Tennessee. 17

I, LEWIS T. BAXTER, Clerk of the Circuit Court of the United States for said district, do hereby certify that the foregoing is a true and perfect copy of the petition of Eugene Kelly, John T. Terry and Peter Geddes to be admitted as co-complainants in the above-entitled cause, together with the order of the Court thereon, as the same appears on file in my office.

Witness my hand and the seal of the Court at office in Nashville in said 18 district, on this 30th day of August, 1879.

LEWIS T. BAXTER,
Clerk.

By E. R. CAMPBELL,
D. Clerk.

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21 UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

[*In Equity.*]

CALVIN AMORY STEVENS, EUGENE KELLY, JOHN T. TERRY and PE-
22 TER GEDDES, on behalf of the Holders of Internal Improvement Bonds of Tennessee issued to the LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

versus

THE LOUISVILLE, NASHVILLE and GREAT SOUTHERN RAILROAD
23 COMPANY.

Amendments to a Bill in Equity:

At the end of the word "orator" wherever it occurs in the bill, add the letter "s"; and after the name "Stevens" add the following: "Eugene Kelly, John T. Terry and Peter Geddes."

Make the pronoun and the verb to which the word
24 "orators" relates plural instead of the singular number.

EDWARD L. ANDREWS,
Solicitor for Complainants.

IN THE

UNITED STATES CIRCUIT COURT,

For the Middle District of Tennessee.

IN EQUITY.

Calvin Amory Stevens, Eugene Kelly, John T. Terry and Peter Geddes, on behalf of holders of Internal Improvement Bonds of the State of Tennessee issued to railroads,

vs.

The Louisville & Nashville Railroad Company,

and

Fifteen other suits on behalf of bondholders, against Fifteen other Railroad Companies.

SOME OF THESE SUITS ARE PENDING IN THE EASTERN, SOME IN THE MIDDLE, AND OTHERS IN THE WESTERN DISTRICT OF TENNESSEE.

OPINION BY S. L. WITHEY, DISTRICT JUDGE, WESTERN DISTRICT OF MICHIGAN.

SEPTEMBER 25th, 1880.

These are suits in equity pending in the Circuit Courts of the United States for the Districts of Tennessee, brought by complainants on behalf of holders of Internal Improvement Bonds of the State of Tennessee against various railroad companies to whom the bonds were issued, to aid in the construction of their several

lines of railroads, and against all other persons interested.

They were argued together in April and May last at Nashville.

The object of the suits is to have a lien in favor of the bondholders declared and established upon the railroads of the several defendant companies, and a Receiver appointed for the collection of the accrued and accruing interest, the interest having been in default since July 1st, 1875. The principal is not due.

The plaintiffs' contention is, briefly, that the Acts passed by the Legislature of the State of Tennessee in 1852, to grant aid to the railroad companies by a loan to them of the bonds of the State, imposed a lien upon the railroads, as security to the holder of the bonds and to the State—payment to the holder would operate as indemnity to the State. Inasmuch as the State and the companies are in default in the payment of the interest since July, 1875, the bondholders by these suits seek to have a lien in their favor established upon the roads.

Statement.

The General Assembly of the State of Tennessee passed, February 11, 1852, an Act known as the "Internal Improvement Act of the State of Tennessee," extending aid to railroad companies by a loan of State bonds, the proceeds to be used in ironing and equipping the roads. Prior to the time of passing the Act, there had been issued State bonds for various purposes, of which above three and a half million dollars were outstanding. The State of Tennessee was now in good credit, her six per cent. bonds brought a premium in the money markets of the world, as did also, subsequently, her bonds issued to the defendant railroad

companies under the Act in question, and Acts amendatory thereof, which bonds are the subject of controversy in these suits. The scheme of internal improvement now adopted was to issue to each Company six per cent. bonds to the amount of eight thousand dollars a mile in installments—afterwards extended to ten thousand dollars,—the first when a section of thirty miles of road was completed ready for the ties, and the subsequent installments upon completion of each additional section of twenty miles; afterwards changed to ten miles. The bonds are transferable by delivery, run not less than thirty nor more than forty years from the respective dates of issue. The interest matures semi-annually, and, with the principal, is payable in New York. They were paid to the railroad company and old in open market without endorsement or guarantee. The State was invested by the terms of the statute with a lien upon each section of the company's road as soon as the bonds for that section were issued, and upon final completion of the road such lien was to attach to the entire road and its equipments. The company was to be incapable of creating any lien conflicting with that in favor of the State.

The amount of the lien claimed by complainants in behalf of such bondholders upon all the railroads is about fifteen million dollars. The litigation, however, affects the holders of between thirty and thirty-five million dollars of other mortgage bonds secured upon these roads and issued under authority of the General Assembly conferred in 1869–70 to enable the aided companies to repay to the State the bonds loaned to them. The holders of the last-mentioned bonds claim to have a first lien upon the roads, and appear in these suits, with the defendant companies, to contest the lien

claimed by complainants and their associate bondholders.

The interest of the State debt was in default from July, 1861, to 1866, during the Civil War, when the price of her bonds had depreciated in value to less than fifty per cent. of their face. The storm of war left the railroads of the State without money, credit or rolling stock, and their roads and bridges going to decay. The first Legislature of Tennessee, after the storm had passed, assembled in 1865, when the State and the railroad companies were alike in a condition of bankruptcy. Provision was now made by the State to fund all her over-due bonds and interest coupons outstanding into new bonds. In 1866 and 1867 the State issued additional bonds to some of these railroad companies to aid them to build bridges and repair their roads, the State reserving a lien and imposing terms and conditions like those in the act of 1852, but somewhat modified.

In 1869–70 none of the principal of the railroad aid bonds issued under the acts of 1852, or acts amendatory thereof, had matured, but now the General Assembly of the State, to enable the respective companies to repay any part of the principal of their indebtedness for bonds loaned to them, passed an act permitting payment in any of the outstanding bonds of the State.

To obtain money to purchase State bonds for surrender, they were severally authorized to issue mortgage bonds upon their respective roads and equipments corresponding in denomination with the State aid bonds, and deposit them with the Comptroller of the State, to be by him delivered to the company or its agent whenever, and as Tennessee State bonds were by the company surrendered and cancelled. These mortgage bonds were by law declared to be a first lien on the road and equipments of the company issuing them,

and as evidence to the purchaser the Comptroller was required to and did certify upon each bond that it was "secured by first mortgage."

Many of the companies availed themselves of this legislation, and under its sanction and authority an aggregate of between thirty and forty million dollars of such mortgage bonds were by the companies issued and sold, and are now outstanding.

Other railroad companies did not avail themselves of the provisions of the law of 1869–70. They continued to be in default as to the payment of interest, and as to payment annually into the sinking fund required by statute. Proceedings by the State were therefore commenced in the State Court of Chancery, and decrees of foreclosure and sale obtained.

At the sale the State was purchaser. These foreclosed roads were subsequently sold by the State and new companies organized. Payment by the purchaser was made to the State in any outstanding Tennessee State bonds at their face value, and the purchaser was invested with all the right and title of the State.

The State, as before stated, had funded her over-due bonds and interest coupons into a new bond under the law of 1865, and in February, 1870, another act was passed to again fund unpaid interest that had accrued on the public debt, together with the floating debt of the State, and all that might become due up to 1874. Holders of Tennessee bonds, including holders of internal improvement bonds issued to railroad companies, generally accepted the provisions thus made for retiring over-due interest coupons, as they had done under the act of 1865. The State of Tennessee however, again defaulted in her interest January, 1, 1875,

and subsequently openly repudiated her bonded debt, for the payment of which the faith and credit of the State were solemnly pledged.

The Statute.

The Internal Improvement Act of February 11, 1852, will alone be referred to, as it contains all the provisions necessary to be considered. The lien is declared by the third section which is as follows:

"That so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon said section so prepared as aforesaid, including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with the said lien or mortgage without a deed from the company, for the payment by said company of said bonds, with the interest thereon as the same becomes due."

The requirement, by section five, as to the payment of interest is, that fifteen days before it falls due the company shall deposit in the bank of Tennessee—the State's fiscal agent—

"an amount sufficient to pay such interest, including exchange and necessary commissions, or satisfactory evidence that said interest has been paid or provided for, and if said company fail to deposit said interest as aforesaid, or furnish the evidence as aforesaid, it shall be the duty of the Comptroller to report that fact to the Governor,"

who is immediately to put the road into the hands of a Receiver to operate it in behalf of the State until the default is made good, and then to surreuder the road to the company.

By the section,

"The Comptroller is authorized, and it is made his duty upon his warrant to draw from the treasury any sum of money necessary to meet the interest on such bonds as may not be provided for by the company as provided for in in this act, and the Comptroller shall report thereof to the General Assembly from time to time."

The requirement as to the payment by the company of the principal of the bonds by section seven is:

"That at the end of five years after the completion of said road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, and as between the State and said company, the bonds so paid in shall be a credit on the bonds issued to the company. And bonds so paid in and the interest accruing thereon, from time to time, shall be held and used by the State asa Sinking Fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be credited as aforesaid and cancelled. And should said company fail to comply with the provisions of this section, it shall be proceeded against, as provided in the fifth section of this act."

viz, as in case of failure to meet installments of interest.

It will be noticed that as these bonds were to be issued in installments at different periods, they would therefore fall due at different times.

The sixth section provides:

"That if said company shall fail or refuse to pay any of said bonds when they fall due, it shall be the duty of the Governor to notify the Attorney General of the district in which is situated the place of business of said company, of the fact; and thereupon, said Attorney General shall forth-

with file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by the Court, to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee against any loss on account of the issuance of said bonds, by ordering the said railroad to be placed in the hands of a receiver, ordering the sale of said road, and all the property and assets attached thereto or belonging to said company, or in such other manner as the Court may deem best for the interest of the State."

By section twelve,

"the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed necessary to protect the interest of the State, and to secure the State against any loss in consequence of the issuance of bonds under the provisions of this act; but in such manner as not to impair the vested rights of the stockholders of the companies."

What the parties claim.

Complainants contend that the statutory lien is to be regarded as an instrument of security taken for the benefit of the bondholders; or more fully stated, that the legislation and action of the State under it were effectual to fix upon the railroads respectively a lien not merely for the indemnity of the State of Tennessee, but also to secure the payment of its bonds to their holders; that the State became trustee of this lien for the benefit of the holder of the bonds, which lien inured to their benefit as *cestius que trusent* of the State, by force of the express contract to that effect in the law creating the security, as well as by necessary legal implication from the relations of the parties, which no subsequent dealings between the railroad companies and the State could discharge. Again it is said:

"the first or primary object of the act was to compel each aided company to pay its debt directly to its true creditor, the lender on the bonds. This was effected by the usual and proper process, a lien pure and simple for the payment of the bonds upon the estate of each aided company enforcible in equity in case of default."

On the other hand defendants' answers state the opposing view thus:

"that the said statutory mortgage was taken by the State in its own behalf and for its own benefit, and not as trustee for its bondholders, and that said statutory mortgage was conditioned solely for the payment by the Company to the State of the company's indebtedness to the State for the bonds loaned to it, and in respect of both principal and interest such payment was conditioned to be made by the company to the State before the corresponding amount of interest or principal would become due or payable by the State to the holders of the State bonds; * * * that by the statute two entirely independent and distinct debts were created, one from the State to the bondholders upon its bonds payable to bearer, resting upon the faith and credit of the State, the other an indebtedness from the railroad company to the State for the amount of the State bonds loaned to it, and that the statutory mortgage was given to secure this latter direct obligation from the railroad company to the State, with which the bondholders had no connection or concern."

It is further said that whether the engagement of the company was to pay to the State or to holders of the bonds is not important, and that if under the terms of the act it shall be held that the companies were to make payment to the bondholders, such payment was to be merely in relief of the State from the ultimate performance of its obligation—but all the while the obligation of the State remained—was to be in exoneration of the State but did not modify its undertaking on the bond and created no privity between the bondholders and the company. That such an undertaking by the company would be to indemnify the State by payment of the

bond in its stead, and that the obligation was to the State alone, and one in which no one else had or was intended to have any legal or equitable interest, much less any direct participation and right of intervention or control. That the relation between the railroad company and the holder of State bonds was that merely of vendor and purchaser of negotiable securities, passing by delivery and without endorsement and therefore created no relation between them of debtor and creditor.

Opinion.

I cannot refrain from expressing personally and officially my acknowledgements for the complete and exhaustive arguments by learned and eminent counsel which distinguished the hearing and submission of these important cases. I approach their consideration with all the aid which the most consummate and elaborate arguments can afford. The opinion will not extend over all the debated ground.

Have the holders of internal improvement bonds, loaned by the State of Tennessee to a railroad company, under the act in question, any enforcible right by contract or otherwise in the statutory lien that is reserved to the State of Tennessee for the payment of the principal and interest of the bonds as they matured? Section three provides:

"That so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon said section * * * and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien * * * for the payment by said company of said bonds, with the interest as the same becomes due."

This section of the statute relates only to the first division of thirty miles, but the lien there declared is

by another part of the act applied and extended to each additional section of twenty miles as fast as completed, and finally to the entire road as security

"for the payment of all bonds issued to the company" (Sec. 4).

The lien upon the property of the company was effected by virtue of the statute upon the issue of the bonds by the State and their acceptance by the company. Unless an intention of the Legislature to secure the purchaser of the bonds can be implied from the act and the dealing of the parties, the claim of complainants to the relief asked in these suits rests upon a mere equity. There is no denial that it was the State of Tennessee which was invested with the lien, but it is said that she occupies the position of a surety holding security for the payment of the debt, which security the creditor—the bondholder—can upon default of the principal debtor—the railroad company—avail himself in equity; that default by the company and by the State in the payment of the interest having occurred, the State becomes and is a trustee of this lien for the benefit of the bondholder. It was the State and the railroad company that dealt together in this matter. The State dictated the terms upon which it would grant aid, and the company accepted those terms without reference to what the purchaser of the bonds would say or claim. The bonds were loaned by the State and passed over to the company to be sold for money to aid or accommodate the company. The bonds were accepted by the company upon the understanding and agreement: 1. That the state was invested with a lien upon the company's railroad and property to secure "the payment by said company of said bonds, with the interest thereon as the same becomes due." 2. That the inter-

est should be paid by the company to the financial agent of the State at least fifteen days before it should become due, or satisfactory evidence be produced that it had been paid or provided for; and 3, that the principal of the bonds should be paid by the company by means of a sinking fund in the State Treasury, created by the purchase and deposit therein of Tennessee interest bearing bonds, supposed to be adequate for the purpose of enabling the State to meet its bonds at maturity.

There is nothing in any of these stipulations out of which the relation of the State to the bondholder is changed from that of a principal debtor to a surety. Nor does it appear how the company becomes debtor to the bondholder in any degree whatever. There is no express promise on its part to the bondholder, nor is any contract relation implied between him and the company. Section three contains no language importing such promise. It declares merely that the State of Tennessee shall be invested with a lien for the payment of the bonds by the company. The State imposes the lien if its aid is accepted, and as a condition of the grant. The language may imply a promise by the company accepting the aid to pay the State, but there is no obligation of the company to pay the bondholder, resulting either from positive law or from contract express or implied.

The lien was clearly "reserved in favor of the State." It was the State of Tennessee that upon the issuance of the bonds was invested with the lien or mortgage without deed. No other lien could have priority over or come in conflict with the lien of the State. The company was to deposit the interest money and exchange with the State's fiscal agent at least fifteen days before it became due, or satisfactory evidence that the interest had been paid or provided. All the suits and proceed-

ings under the Act are given as remedies exclusively to the State. The State might have a decree and sell the road for non-payment of any bond. The bond was made by the State for the accommodation of the railroad company and was sold in open market, without any promise by the company, other than what is implied to the State by accepting the benefit of the Act.

There is no express declaration of trust on the part of the State. It is sought to raise a trust out of the language of the Act, and the principle is invoked applicable to a security given by a debtor to his surety conditioned that it shall be void if the mortgagor pays the debt on which the mortgagee is surety, viz: that in such case the mortgage will be held both as an indemnity to the surety and as a security for the debt; the surety being regarded in equity as trustee for the benefit of the creditor and as having no right to discharge or defeat the trust, unless it be to a purchaser for a valuable consideration without notice.

The rule is not questioned. But it is not conceived that this rule would control the express terms of a mortgage or other instrument of security, nor render wholly nugatory the effect of an express reservation of a right of disposition of the mortgaged property by the mortgagee as is provided in the statute under consideration.

It is not within the province of equity to import conditions into the mortgage. The conditions of this statutory lien were, that the company should deposit the interest money and exchange with the State's fiscal agent or furnish evidence of prior payment, and should also pay into the treasury the means of providing a Sinking Fund for the ultimate payment of the bonds. This dealing was to be with the State—as to the payment of the principal it must have been—as to the pay-

ment of interest it was optional with the company—and there being no express covenant by the company a compliance with the conditions named in the mortgage would discharge the lien.

We do not overlook a claim made by one of complainants' counsel, that the intention of the Legislature is to be ascertained by the language of the statute declaring the lien, but we think the statute must be construed together, and that the requirements put upon the mortgagor—the conditions of his mortgage—when read in connection with the declaration, many times repeated in the statute, that the lien is the lien of the State, should have great weight in determining the legislative intention. The meaning of the legislation is to be declared from the words and subject matter of the statute. It is the scope and meaning of the whole enactment, rather than the literalism of words and phrases that are to govern; the signification of the entire Act and not a single clause determines the intention of the law maker. Thus section six, considered with other provisions of the Act, is important as reserving to the State the right through proceedings in Court to sell the road, thereby discharging it from the lien imposed by the statute.

The fact that the State might discharge the lien in such way imports that there was no intention of the law makers to give a beneficial interest in the security to any one but the State. This view applies with peculiar force where the holder of the security is a State not amenable to the ordinary process of Courts.

This view of the effect of section six upon the construction as to legislative intent is not weakened but fortified by section fourteen, which declares that

"in the event any of the roads shall be sold under the provisions of the Act, it shall be the duty of the

Governor to appoint an agent for the State to attend the sale, and, if necessary to protect the interests of the State, buy in the road in the name of the State; and in case the State shall be the purchaser, the Governor shall appoint a Receiver who shall take possession of the road and property, and use the same as provided for in the fifth section of this Act, and said Receiver shall settle his accounts semi-annually with the Comptroller until the next meeting of the General Assembly."

This section imports three things at least as to a sale: 1, a third person may be a purchaser; 2, the State may be the purchaser; 3, that the purchaser obtains a title discharged of the lien. It is manifest that if a stranger buys he takes title freed from all liens imposed by the act upon the property, and there is nothing in the language of the section or in the act to indicate that the State, becoming purchaser, does not take the property equally free from such lien.

The Receiver appointed by the Governor is to take possession of the road and "use the same as provided for in the fifth section," that is, in like manner, viz.: "run the same and manage the entire road." This he is to do until the next meeting of the General Assembly, when by clear implication the future management or disposition of the road is left to legislative action.

The contract between the State and the company is that the State shall have a lien "for the payment by said company of said bonds," but it is nowhere required by the State, and therefore not assented to by the company, that the latter shall pay *to the bondholder*. It was urged that this language imports payment by the company to the only person then entitled to ask or enforce it. The language must, however, be understood to relate to other parts of the statute which prescribes specifically the manner of payment by the company, viz.: payment annually into the State Treasury of a sum to be employed as a sinking fund.

It is made optional, by section five, with the company, whether it will deposit the interest as it becomes due with the fiscal agent of the State or pay the same to the bondholder, and by section seven the principal was to be paid by setting apart annually after five years from the completion of the road a certain per centum of the amount of bonds issued to the company, invested in any bonds of the State and assigned to the Governor. This sinking fund provision would, within the period which the bonds had to run, place in the treasury of the State an amount sufficient to nearly or quite enable the State to pay the bonds. The Tennessee bonds were generally six per cent., and funded in those the time required would be thirty-three years and two months.

There is nothing in the act to indicate that after the company has complied with these provisions as to interest and sinking fund, and has thus provided the State with the means of payment, that the company was also required to pay to the bondholders. Certainly this was not the condition of the security, as the only way in which a default could occur was by failure of the company to provide for payment of the interest and principal in those specified ways.

But it is said the Sinking Fund was not to be commenced until five years after the particular road should be completed, and that that event might not take place at all or not till half or more of the time which the bonds had to run had expired, so that the period might be wholly inadequate in which to provide a sufficient Sinking Fund for paying the bonds when due, and that this indicates that the lien was not intended as security merely for payment by the company to the State by means of a Sinking Fund in the manner provided. A statute must be construed from the standpoint, the circumstances and surroundings of the lawmakers when

it was enacted; and it would be unjust and repugnant to reason and common experience to assume that the Legislature passed the act in the expectation that the roads would never be finished or would not be completed within a reasonable time. Besides section twelve reserved to the State ample powers to make such modifications in relation to the time for the Sinking Fund to commence and the per cent. annually to be paid into that fund as would fully protect the interests of the State against delay on the part of the railroad company.

Whatever might be said in regard to the evidence, adduced in these cases, of contemporaneous construction through the utterances of State officials in public documents, the action of any department of the State government or otherwise, there is, in the judgment of the court, nothing to change the views which have been expressed.

Chamberlain *v.* St. Paul and Sioux City R. R. Co., 92 U. S., 299, was decided upon a statute and upon facts similar to those in the present cases and is very instructive. The State of Minnesota by a constitutional amendment provided for an issue of its bonds as a loan to the Southern Minnesota Railroad Company, and required such company to convey the lands in question "in trust for the better security of the Treasury of the State from loss on said bonds," and further provided that if the borrowing company should make default in payment of either the principal or interest of the bonds issued by the State, the Governor should proceed to sell the lands held in trust by the State. The company accordingly executed a trust conveyance of the lands to the State, conditioned for the payment of the principal and interest of the bonds issued to that company. The company made default in the payment of interest. The State foreclosed and became the purchaser of the lands which she granted to another corporation, the de-

fendant in the Chamberlain suit. Chamberlain was holder of some of the State bonds, the payment of which was secured by the trust conveyance, and sought to have a lien upon the land declared in his favor.

In the cases at bar, as in that case, the State was primarily liable to the holder of the bonds. In the cases at bar, as in that case, the State reserved to itself the right of foreclosure and disposition of the property. In deciding that case, Justice Field after stating the position of the complainant, viz.: "that the interest which the State took under the trust deed and mortgage was only the right to hold them as security against loss upon its bonds, * * * that this interest was not changed by foreclosure of the mortgage and by purchase of the property by the State," uses the following language:

"The State was primarily liable to the bondholders; and it was only between her and the company that the relation of principal and surety existed.

It may be doubted whether the bondholders could call upon the company in any event. The endorsement made by the President simply transferred the bonds; it was not the act of the company. Be that as it may, whatever right the plaintiff had to compel the application of the lands received by the State to the payment of the bonds held by him, it was one resting in equity only. It was not a legal right arising out of any positive law or any agreement of the parties. It did not create any lien which attached to and followed the property. It was a right to be enforced if at all only by a Court of Chancery against the surety. But the State being the surety here, it could not be enforced at all, and, not being a specific lien upon the property, cannot be enforced against the State grantees."

This was said to be the law of that case, even if the bondholders could have called upon the company for payment. But laying this feature aside, the analogies are as before stated, and whatever right the plaintiffs

have to claim benefit from the security rests here as in that case as a mere equity; there was no legal right because the law did not impose one, and the company made no promise to the bondholders. Such equity created no lien which followed the property; the liability of the State was to the bondholder. She held no relation as surety to him; as in the Chamberlain case, it was only as between her and the company that in any possible view the State could be regarded as surety, and this view would make it necessary to treat the company as the principal debtor to the bondholder, whereas the company was not the principal debtor, nor indeed a debtor to the bondholder in any degree.

The reasoning in the case of Hand *v.* R. R. Co., in the Supreme Court of South Carolina—manuscript—referred to on the argument, cannot all be adopted as applicable to these cases if the conclusions might be.

It is not upon its fact authority. The railrond company made its own bonds and the State guaranteed their payment to the holder by endorsement. The State was secured by a lien upon the company's road, reserved by the statute which authorized the guarantee. As a surety the State assumed contract obligations to the creditor—the bondholder. If a creditor has a right to claim the benefit of security given by the debtor to his surety for the latter's indemnity, it does not follow that the right exists where the principal debtor takes the security from the accommodatee and where the security holder holds no other relation to the creditor than that of debtor, and the giver of the security is neither a debtor or surety to the creditor.

It becomes unnecessary to further consider the effect of the reservation of power to the State under section twelve. The court has already stated that such re-

served power is ample to authorize a modification of the sinking fund provisions, as has been done by increasing the amount to be paid annually into the Sinking Fund, and changing the time for such payment to commence.

It follows that by this judgment neither the foreclosed or the non-foreclosed roads are subject to any lien in favor of the holders of internal improvement bonds issued by the State of Tennessee, under the acts passed by that State, and to which reference has been made.

Other topics presented in the arguments need not be considered.

A decree will be entered in each case, dismissing the bill of complaint therein, with costs to defendants, and it is directed that such decrees be drawn and presented for approval.

Decree.

CIRCUIT COURT OF THE UNITED STATES,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, who sues on behalf of himself and other Holders of Tennessee State Bonds,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

In Equity.

This cause came on to be heard upon the bill of complaint, the answers thereto, the answer and cross-bill of the defendant, John B. Smith, the answer of the complainant thereto, the replications and the proofs, and was argued by counsel for the respective parties:

And the Court now being fully advised thereon finds:

First.—The equity of the cause to be with defendant.

Second.—That the complainant is not entitled to the relief prayed for.

Third.—That the deeds of trust and mortgages set forth in the answer and cross-bill of the said John B. Smith, made to the said Smith and the said Alexander, and the said Vail, are, in respect to

the claim of the complainant and all other holders of the bonds of the State of Tennessee, originally loaned by said State to the Louisville and Nashville Railroad Company, the best and only liens and incumbrances on said property therein described; and

Fourth.—That in respect to the right and title of the said John B. Smith as trustee under the same, and the equity of the holders of the bonds thereby intended to be secured, the lien originally reserved by the State of Tennessee, on account of, its bonds loaned to the Louisville and Nashville Railroad Company, has been effectually discharged and released.

It is therefore ordered, adjudged, and decreed that the bill of complaint of the complainant be, and the same is hereby dismissed, and that the said John B. Smith, as trustee under said deeds of trust and mortgages, be forever quieted in his said right and title under the same, against the claim of the complainants and all other holders of like bonds of the State of Tennessee originally issued to the Louisville and Nashville Railroad Company, and that they be and are hereby perpetually enjoined from hereafter, contrary to this decree, setting up their claim aforesaid.

And it is further ordered, adjudged and decreed that the said complainant pay to the defendants the costs of this suit, to be taxed, and that defendant have execution therefor. And thereupon came the complainants at the same time, and prayed an appeal from the foregoing decree, which appeal is allowed, and the amount of the penalty of the bond to be given by them is fixed at one thousand dollars.

Settled and approved, this 30th day of October, A. D., 1880.

(Signed.) S. L. WITHEY,
Dist. Judge,
West. Dist. Mich.

Supersedeas Bond. 1

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, EUGENE KELLY, JOHN T. TERRY and PETER GEDDES, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the LOUISVILLE and NASHVILLE RAILROAD COMPANY,	2
vs.	In Equity.
The LOUISVILLE, NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.	3

Know all men by these presents, that we, Calvin Amory Stevens, Eugene Kelly and John T. Terry resident of the City and State of New York, and Peter Geddes, resident of the City of Brooklyn, in the State of New York, and Eugene Plunkett and 4
Solon Humphreys, residents of the City and State of New York, are jointly and severally held and firmly bound unto the Louisville and Nashville Railroad Company in the sum of one thousand dol-

5 lars each, to be paid to the said The Louisville and Nashville Railroad Company and its successors, for which payments well and truly to be made, each of us doth hereby bind himself, his heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 29th day of December, in the year of our Lord one thousand eight hundred and eighty.

6

Whereas lately at a regular term of the Circuit Court of the United States in and for the Middle District of Tennessee, held by consent of all parties to the record at the City of Nashville, in said State, a final decree was rendered in the above-entitled cause, dismissing the complainant's bill out of the said Court.

And whereas an appeal from said decree to the Supreme Court of the United States was prayed on
7 behalf of complainants in said suit, namely, Calvin Amory Stevens, Eugene Kelly, John T. Terry and Peter Geddes, which appeal was granted, and the order granting the same was filed with the clerk of said Circuit Court.

Now the condition of the above obligation is such that if the said Calvin Amory Stevens, Eugene Kelly, John T. Terry and Peter Geddes, shall prosecute the said plea to effect, and answer all damages and costs if they fail to make the said appeal good,
8 then the above obligation to be void; else to remain in full force and virtue.

CALVIN AMORY STEVENS, [SEAL.]
EUGENE KELLY, [SEAL.]
P. GEDDES, [SEAL.]
JOHN T. TERRY, [SEAL.]
EUGENE PLUNKETT, [SEAL.]
SOLON HUMPHREYS. [SEAL.]

UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

On this 29th day of December, 1880, before me personally appeared Calvin Amory Stevens, Eugene Kelly, Peter Geddes, John T. Terry, Eugene Plunkett and Solon Humphreys, to me known, and known to me to be the same persons described in and who executed the foregoing bond, and severally acknowledged to me that they executed the same.

WILLIAM H. DE LANCEY,
[L. S.] *Notary Public,*
Westchester and N. Y. Cos.

UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

CALVIN AMORY STEVENS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

CALVIN AMORY STEVENS.

Sworn to before me, this 29th day of December, 1880.

WILLIAM H. DE LANCEY,
[L. S.] *Notary Public,*
Westchester and N. Y. Co.

UNITED STATES OF AMERICA, } ss.:
Southern District of New York. }

EUGENE KELLY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE KELLY.

Sworn to before me, this 29th day of December, 1880.

WILLIAM H. DE LANCEY,
[L. S.] *Notary Public*,
Westchester and N. Y. Cos.

UNITED STATES OF AMERICA, *Southern District of New York.* } ss:

PETER GEDDES, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

P. GEDDES.

Sworn to before me, this 29th day of December, 1880.

[SEAL.] WILLIAM H. DELANCEY,
Notary Public,
Westchester & N. Y. Co's

UNITED STATES OF AMERICA, *Southern District of New York.* } ss:

JOHN T. TERRY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities, and property exempt by law from execution.

JOHN T. TERRY.

Sworn to before me, this 29th day of December, 1880.

[SEAL.] WILLIAM H. DELANCEY,
Notary Public,
Westchester & N. Y. Co's.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. } 17

EUGENE PLUNKETT, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE PLUNKETT.

Sworn to before me, this 29th }
day of December, 1880. } 18

[SEAL.] WILLIAM H. DELANCEY,
Notary Public,
Westchester & N. Y. Co's.

UNITED STATES OF AMERICA. }
Southern District of New York, } ss.:

SOLON HUMPHREYS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my 19
debts, and liabilities and property exempt by law from execution.

SOLON HUMPHREYS.

Sworn to before me, this 29th }
day of December, 1880. }

WILLIAM H. DELANCEY,
[L.S.] *Notary Public,*
Westchester and N. Y. Cos.

20

UNITED STATES OF AMERICA, } ss.:
Southern District of New York. }

WILLIAM H. FARRELL, being duly sworn, deposes and says: I am well acquainted with Eugene Plunkett, one of the sureties named in the foregoing bond and know of my own knowledge that he is worth the sum of two thousand dollars over and above all

21 his debts and liabilities and property exempt by law from execution.

WM. H FARRELL.

Sworn to before me, this 30th day of December, 1880.

WILLIAM H. DELANCEY,
[L.S.] *Notary Public*,
Weschester and N. Y. Cos.

22 UNITED STATES OF AMERICA, *Southern District of New York.* } ss.:

S. NEWTON SMITH, being duly sworn, deposes and says: I am well acquainted with Solon Humphreys one of the sureties named in the foregoing bond, and know of my own knowledge that he is worth the sum of two thousand dollars, over and above all his debts and liabilities and property exempt by law from execution.

S. NEWTON SMITH.

23 Sworn to before me, this 30th day of December, 1880.

WILLIAM H. DELANCEY,
[LS.] *Notary Public.*
Westchester and N. Y. Cos.

By the Hononrable John Baxter, United States Judge in and for the Sixth Judicial Circuit, Middle District of Tennessee.

I hereby approve the foregoing bond as to form
24 and manner of execution, and as to the amount thereof, and the sufficiency of the sureties, and direct that the same shall operate as a supersedeas.

Dated January 6th, 1881.

JNO. BAXTER,
United States Judge.

CIRCUIT COURT OF THE UNITED STATES.

MIDDLE AND WESTERN DISTRICTS OF TENNESSEE.

C. Amory Stevens *vs.* The Louisville & Nashville Railroad Company *et al.*

Same *vs.* Louisville & Nashville Railroad Company, Nashville & Decatur Railroad Company *et al.*

Same *vs.* Same.

Same *vs.* Louisville & Nashville Railroad Company, Memphis & Ohio Railroad Company *et al.*

Same *vs.* Louisville & Nashville Railroad Company, Memphis, Clarksville & Louisville Railroad Company *et al.*

It is agreed that the following described testimony, so far as relevant and competent, shall be considered as read in each o the foregoing cases, printed copies to be furnished by either of us to the clerk when he makes up the record, as part thereof:

FOR THE COMPLAINANT.

1. Printed stipulation signed E. L. Andrews and Ed. Baxter, as heretofore filed in these causes.

2. Printed stipulation signed by George Hoadly and Stanley Matthews.

3. Printed compilation made up by complainant.

4. Record of proceedings, Davidson County Court, printed.

5. Certificate of cash in State treasury, printed.

6. Printed statement of prices of State bonds, after January 1, 1870, contained in stipulation of Evarts, Southmayd and Choate and E. L. Andrews.

7. Depositions of C. Amory Stevens, three in number; also of Eugene Kelly, John T. Terry, George Arents, Ed. Baxter, Wm. H. Osborn, Dempsey Weaver and Albert S. Marks.

8. Two depositions of Richard T. Wilson.

9. Printed copy, order of E. M. Stanton, Secretary of War, dated August 8, 1865.

10. Report (printed copy) of Judiciary Committee, W. H. Wisener Chairman, February 19, 1869, and copy of Senate and House Journal relative to the bill referred to in said report.

11. Act of February 9, 1850, sections 1 to 3 inclusive.

FOR THE RESPONDENTS.

Nos. 1 and 2 as above, being the two printed stipulations above referred to.

3. Printed compilation made up by respondents.

4. Printed record of foreclosure in the Chancery Court at Nashville of the State *vs.* The Memphis, Clarksville and Louisville Railroad Company, all objections on account of its being an incomplete record being waived.

5. Pages 128 to 177, both inclusive, of the printed report of James L. Gaines, Comptroller of the State of Tennessee, to the Forty-first General Assembly of the State of Tennessee, made January 6, 1879.

6. Printed depositions of John C. Brown, Maney Bell, Samuel R. Cruse, John S. Claybrooke, R. C. Jackson, John J. Craig, Campbell Wallace, Neil S. Brown, Columbus Powell, Albert Roberts, D. B. Cliffe, J. W. Drexel, V. K. Stevenson, J. G. M. Ramsey, B. O. White, John M. Fleming, Ira P. Jones, Peter Geddes, J. D. Porter, M. T. Polk and James L. Gaines. The last three were taken by Hon. James Fentress.

The foregoing depositions are such as have been taken in various cases brought by the complainant against the foregoing and other railroad companies in Tennessee.

Also, all depositions and other documentary testimony heretofore filed in the cases named in the caption of this [redacted] agre

While it is agreed that the foregoing depositions and documents may be filed in these cases, it is expressly understood that to make them, or either of them, or any part of either of them, competent in these cases, the testimony must be competent and relevant in these particular cases, and that no special exceptions need be taken to point out the irrelevant and incompetent testimony, but its inadmissibility may be pointed out and relied upon in argument or brief, both in the Circuit and Supreme Court.

It is also expressly understood that where any fact is agreed upon in the stipulation signed by Andrews and Baxter, or in the stipulation signed by Matthews and Hoadly, referred to above, it shall not be affected by anything contained in the depositions or other documentary proof agreed to be filed in this stipulation.

It is further agreed that the record of the exhibits and testimony aforesaid shall be made up by the clerk in any one of these causes, and that the same shall be treated, regarded and considered as the record of the exhibits and testimony in each and all of the said causes, and that upon appeal to the Supreme Court of the United States a single transcript of the record of said exhibits and testimony so made up may be filed as the record of said exhibits and testimony in each and all of said causes, without filing or docketing any other record except the proper record in each cause so appealed of the pleadings, process, orders and decrees and action and testimony therein other than that contained in said record of said exhibits and testimony.

GEO. HOADLY,
Solicitor for Complainant.
STANLEY MATTHEWS,
For John B. Smith and others, Defendants.
ED. BAXTER,
Solicitor L. & N. R. R. Co., N. & D. R. R. Co., Mem. & O. R. R. Co., Mem., C. & L. R. R. Co.

NASHVILLE, May 7, 1880.

print.

CAPTION.

UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, County of New York, } ss.:

Be it remembered that on the 5th, 8th, 9th, 10th, 11th and 12th days of July, in the year of our Lord one thousand eight hundred and seventy-nine, I, WILLIAM H. DE LANCEY, a notary public in and for the State and county aforesaid, duly commissioned and qualified under the laws of the United States to take depositions for use in the Circuit Courts of the United States, did call and cause to be and personally appear before me at my office, No. 52 Broadway, in the city of New York, in the Southern District of New York, in the State and county aforesaid, CALVIN AMORY STEVENS, to testify and the truth to say on the part and behalf of the complainant, in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States, for the Middle District of Tennessee, at Nashville, in the district aforesaid, wherein Calvin Amory Stevens, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Louisville & Nashville Railroad Company is complainant, and the Louisville, Nashville & Great Southern Railroad Company is defendant.

And also in a certain other suit or matter at controversy, now depending and undetermined in said Circuit Court, wherein Calvin Amory Stevens, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Central Southern Railroad Company is complainant, and the Nashville & Decatur Railroad Company *et al.* are defendants.

And also in a certain other suit or matter at controversy, now depending and undetermined in said Circuit Court, wherein Calvin Amory Stevens, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Tennessee & Alabama Railroad Company is complainant, and the Nashville & Decatur Railroad Company et al. are defendants.

And the said Calvin Amory Stevens, being about the age of thirty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the several matters of controversy aforesaid, I did carefully examine the said Calvin Amory Stevens, and he did thereupon depose, testify and say as follows, viz :

UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

[In Equity.]

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the LOUISVILLE & NASHVILLE RAILROAD COMPANY,

versus

THE LOUISVILLE, NASHVILLE & GREAT SOUTHERN RAILROAD COMPANY et al.

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the CENTRAL SOUTHERN RAILROAD COMPANY,

versus

THE NASHVILLE & DECATUR RAILROAD COMPANY et al.

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the TENNESSEE & ALABAMA RAILROAD COMPANY,

versus

THE NASHVILLE & DECATUR RAILROAD COMPANY et al.

52 Broadway,
NEW YORK, July 5th, 1879.

Hearing to take the deposition of Calvin A. Stevens, pursuant to notice.

Present—Mr. ANDREWS for complainant,
Mr. BAXTER for defendants.

It is consented and agreed by both parties that the deposition of the witness, Calvin A. Stevens, shall be taken but once, and is to apply to each of the above-entitled actions, and be considered as offered as testimony in each.

13 CALVIN A. STEVENS, being first duly cautioned and sworn, in each of the above-entitled actions, deposes and says:

Hearing adjourned by consent to July 8th, 1879, at 10 A. M.

July 8th, 1879, 10 A. M.

Direct examination by Complainant's Counsel:

1 Q. Are you the plaintiff in these causes?

A. I am.

14 2 Q. Are you the owner and holder of Tennessee bonds?

A. I am.

3 Q. Will you produce before the Commissioner and the counsel here, for their inspection, Tennessee bonds of which you are the owner and holder?

A. Yes, sir; there they are.

(Bonds produced.)

4 Q. Please furnish the Commissioner with a copy of
15 the bonds or leave the same with the Commissioner to enable him to take a copy?

A. I will.

(Bonds are left with Commissioner for the purpose of having copies taken to be certified by him.)

5 Are there overdue coupons on these bonds?

A. There are.

16 (Counsel for defendants object to questions 4 and 5, because, first, complainant must file his original bonds, and have them marked, filed and returned as a part of this deposition, the filing of copies not being admissible under the practice; and when said bonds are filed they will be the best evidence as to whether there are any past due coupons on them or not. Defendants will

move to suppress this deposition if the bonds are not filed as above required.) 17

6 Q. Are the holders of Tennessee bonds very numerous?

A. They are, sir.

7 Q. Where do they reside, so far as you know?

A. In many different places.

(Counsel for complainant requests the Commissioner to certify in his return the amount of the bonds now produced before him with the amount of overdue coupons on each bond.) 18

(Counsel for defendants excepts to any such certificate being made, because, if the bonds are filed as they should be, they will be the best evidence of the facts asked for to be certified.)

Commissioner's Certificates to Bonds.

In the case of 19

CALVIN AMORY STEVENS, on behalf of the holders of Tennesses bonds issued to the LOUISVILLE & NASHVILLE RAILROAD COMPANY,

versus

THE LOUISVILLE, NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY *et al.* 20

IN THE UNITED STATES CIRCUIT COURT,

FOR THE MIDDLE DISTRICT OF TENNESSEE.

I hereby certify that there was produced before me

21 during the taking of the deposition in this cause fourteen (14) Tennessee bonds, each bond being for the principal sum of one thousand dollars, and bearing the impression of the Great Seal of the State of Tennesse on the face thereof. A true and exact copy of one of said bonds is as follows :

Complainant's Exhibit No. 1.

July 8th, 1879.—W. H. D. L., Notary Public.

M. UNITED STATES OF AMERICA, M.

22 No. 6,532. B.

STATE OF TENNESSEE.

Know all men by these presents, that the State of Tennessee acknowledges to owe to or order one thousand dollars, lawful money of the United States, which sum the said State promises to pay in the city of New York on the 1st day of January, 1892, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the

23 presentation of the coupons hereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of the General Assembly of said state, passed at its session of 1851-2.

In witness whereof I, Isham G. Harris, Governor of said State, have hereunto signed my name and caused the same to

[L. S.] be countersigned by the Secretary of

24 said State, and the Great Seal of said State to be hereto affixed at Nashville, this 1st day of January, 1858.

ISHAM G. HARRIS,
Governor.

WM. N. McBURTON,
Secretary of State.

$1,000 $1,000.

The other (13) of said bonds are of like tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows:

6,593.
6,284.
6,587.
6,621.
6,580.
6,630.
6,643.
6,430.
6,570.
6,407.
9,439.
6,581.
6,203.

All of said bonds are dated on the first day of January, 1858, except No. 9,439, which is dated January 1st, 1859, and contains at the end of the body of the bond after the words "session of 1851-2" the words "and acts amendatory thereto," and signed by J. E. R. Ray, Secretary of State.

All of said bonds have thirty-three (33) coupons attached thereto, except the following numbers of bonds:

6,570, which has 31 coupons,
6,417, " " 31 "
6,581, " " 28 "
6,303, " " 30 "

The last coupon attached to each of said bonds, being the coupon first falling due, is in all respects, except as hereinafter stated, similar and like unto the following true and exact copy thereof:

29 $30. $30.

The Treasurer of the State of Tennessee will pay the bearer thirty dollars, in the City of New York, on the first day January, 1876, being the semi-annual interest then falling due on bond No. 6,532.

$30 $30.

J. T. DUNLAP,
Comptroller.

30 There are eight overdue coupons upon ten of said bonds, the first coupon thereof having fallen due on the first day of January, 1876. The other seven of said overdue coupons fell due at intervals of six months from the date of the coupon above mentioned, namely :

On the 1st of July, 1876.
On the 1st of January, 1877.
On the 1st of July, 1877.
On the 1st of July, 1878.
31 On the 1st of July, 1878.
On the 1st of January, 1879.
On the 1st of July, 1879.

Upon the other four bonds there are overdue coupons as follows :

On 6,570, six overdue coupons,
" 6,407, six " "
" 6,581, three " "
32 " 6,303, five " "

That is to say :

On 6,570, the last attached coupon fell due January, 1877
" 6,407, " " " " January, 1877
" 6,581, " " " " July, 1878
" 6,303, " " " " July, 1877

All of the foresaid bonds, with the coupons attached 33
thereto, were left by the witness Calvin Amory Stevens for inspection by me and the solicitor for the defendant then and there present, and were inspected by me and by him.

[L.S.] WILLIAM H. DELANCEY,
Notary Public.

34

In the case of

CALVIN AMORY STEVENS, on behalf of the holders of Tennessee bonds issued to the CENTRAL SOUTHERN RAILROAD COMPANY,

versus

THE NASHVILLE & DECATUR RAILROAD COMPANY *et al.*

35

IN THE UNITED STATES CIRCUIT COURT,

FOR THE MIDDLE DISTRICT OF TENNSSSEE.

I hereby certify that there was produced before me during the taking of the deposition in this cause seven (7) Tennessee bonds, each bond being for the principal 36
sum of one thouand dollars, and bearing on its face the impression of the Great seal of the State of Tennessee. A true and exact copy of one of said bonds is as follows:

37 **Complainant's Exhibit No. 2.**

July 8th, 1879.—W. H. D. L., Notary Public.

M UNITED STATES OF AMERICA. M
No. 7,910 B.

STATE OF TENNESSEE.

Know all men by these presents, That the State of Tennessee acknowledges to owe to
or order, one thousand dollars, lawful money of the
38 United States, which sum the said State promises to pay in the city of New York, on the 1st day of January, 1898, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor and upon the presentation of the coupons hereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance, and under the provisions of an Act of the General Assembly of said State, passed at its session of 1851-2, and acts amendatory
39 thereto.

In witness whereof, I, ISHAM G. HARRIS, Governor of said State, have hereunto signed my name and caused the same
[L.S.] to be countersigned by the Secretary of said State, and the Great Seal of said State be hereto affixed at Nashville, this 1st day of January, 1858.

ISHAM G. HARRIS,
Governor.

40 J. E. R. RAY,
Secretary of State.

1,000. 1,000.

All of the other six (6) of said bonds are of like tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows:

8,024.
7,525.

8,012.
7,942.
7,913.
8,061.

All of said bonds have thirty-three coupons attached thereto. The last coupon attached to each of said bonds, being the coupon first falling due, is in all respects like the following true and exact copy thereof:

$30 $30

The Treasurer of the State of Tennessee will pay the bearer thirty dollars, in the city of New York, on the first day of January, 1876, being the semi-annual interest then falling due on bond.

No. 7,910.

J. T. DUNLAP,
Comptroller.

$30 $30

There are eight (8) overdue coupons upon each of said bonds, the first coupon thereon having fallen due on the first day of January, 1876. The other seven (7) of said overdue coupons fell due at intervals of six months from the due date of the coupon above set forth, namely:

On the first of July, 1876.
" January, 1877.
" July, 1877.
" January, 1878.
" July, 1878.
" January, 1879.
" July, 1879.

All of the aforesaid bonds with the coupons attached thereto, were left by the witness Calvin Amory Stevens for inspection by me and the solicitor for the defendants then and there present, and were inspected by me and by him.

WILLIAM H. DE LANCEY,
[L. S.] Notary Public.

45 In the case of

CALVIN AMORY STEVENS, on behalf of the holders of Tennessee bonds issued to the TENNESSEE and ALABAMA RAILROAD COMPANY,

versus

46 THE NASHVILLE and DECATUR RAILROAD COMPANY, *et al.*

IN THE UNITED STATES CIRCUIT COURT,

FOR THE MIDDLE DISTRICT OF TENNESSEE.

I hereby certify that there was produced before me, during the taking of the deposition in this cause, twelve (12) Tennessee bonds, each bond being for the principal sum of one thousand dollars (1,000), and
47 bearing on its face the impression of the Great Seal of the State of Tennessee. A true and exact copy of one of said bonds is as follows:

Complainant's Exhibit No. 3.

July 8th, 1879.—W. H. D. L., Notary Public.

M. UNITED STATES OF AMERICA. M.

No. 1053. B.

STATE OF TENNESSEE.

48

Know all men by these presents, that the State of Tennessee acknowledges to owe to or order one thousand dollars, lawful money of the United States, which sum the said State promises to pay in the City of New York, on the 1st day of January, 1892, with interest, at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon

the presentation of the coupons hereto attached. For 49
the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance, and under the provisions of an Act of the General Assembly of said State, passed at its session of 1851–2.

In witness whereof, I, ANDREW JOHNSON, Governor of said State, have hereunto signed my name, and caused the same
[L. S.] to be countersigned by the Secretary 50
of said State, and the Great Seal of said State to be hereto affixed, at Nashville, this 1st day of January, 1854.

ANDREW JOHNSON,
Governor.

W. B. A. RANNEY,
Comptroller.

$1,000 $1,000 51

The other eleven (11) of said bonds are of like tenor in all respects, with the foregoing, except that they differ in their numbers, being numbered as follows:

8,151,
6,406,
6,918,
1,027,
7,028,
6,350,
5,970, 52
6,383,
6,962,
6,957,
6,269.

All of said bonds are dated on the first day of January, 1858, except numbers 1,027 and 1,053, which are

53 dated on the first day of January, 1854. Number 8,151 contains at the end of the body of the bond, after "Session or 1851-2," the words "and acts amendatory thereto."

The signatures to the said twelve (12) bonds are as follows:

Numbers 1,053 and 1,027 are signed by Andrew Johnson, Governor, and W. B. A. Ranney, Secretary of State.

Numbers 8,151, 6,918, 7,028, 6,962 and 6,957 are
54 signed by Isham G. Harris, Governor, and J. E. R. Ray, Secretary of State.

Numbers 6,406, 6,350, 5,973, 6,383 and 6,269 are signed by Isham G. Harris, Governor, and W. N. McBurton, Secretary of State.

All of said bonds have thirty-three (33) coupons attached thereto, except number 6,350, which has but thirty.

The last coupon attached to each of said bonds, being the coupon first falling due, is in all respects, except as
55 hereafter stated, like the following true and exact copy thereof.

$30. $30.

The Treasurer of the State of Tennessee will pay the bearer thirty dollars, in the City of New York, on the first day of January, 1876, being the semi annual interest then falling due on Bond No. 1,053.

$30. $30.

56 ARTHUR R. CROZIER,
Comptroller.

There are eight (8) overdue coupons upon eleven (11) of said bonds, the first coupon thereof having fallen due on the first day of January, 1876. The other seven (7) of said overdue coupons fell due at intervals of six months from the due date of the coupon above set forth, namely:

On the first of	July, 1876.	57
" "	January, 1877.	
" "	July, 1877.	
" "	January, 1878.	
" "	July, 1878.	
" "	January, 1879.	
" "	July, 1879.	

Upon number 6,359 there are five (5) overdue coupons, the first one falling due on the first day of July, 1877.

All of the aforesaid bonds, with the coupons at- 58
tached thereto, were left by the witness, Calvin Amory Stevens, for inspection by me, and the solicitor for the defendants then and there present, and were inspected by me and by him.

[L. S.] WILLIAM H. DELANCEY,
Notary Public.

Complainant closes his direct examination.

Cross examination by Mr. BAXTER: 59

8 x Q. Please state your age, residence and occupation? How long have you resided there and how long you have followed that occupation?

A. I was born August 2d, 1845; I reside in New York; I could not tell how long without referring to dates I have not here: I am not in active business.

(Defendants' counsel asks for a continuance of this deposition until the witness can get the dates, from which he can tell how long he has resided 60
in New York City; and without waiving his right for such continuance, in order to save time proceeds to put other questions in cross-examination.)

9 x Q. Are you the absolute, sole and unconditional owner of each and every bond upon which you have brought suit against the Louisville & Nashville or the

61 Nashville and Decatur Railroad Companies? If not, give the name and residence of each and every person who has any interest in any of said bonds, whether as partner, part owner, pledgee or otherwise.

A. I am the absolute owner; I am the absolute, sole and unconditional owner; no one has any interest in said bonds as partner part owner, pledgee or otherwise.

10 x Q. Have not some of said bonds, and which of them, been loaned to you by their real owners to ena-
62 ble you to make a case against each of said Companies? If so; which of said bonds have been so loaned, and by whom?

A. There have not been any of said bonds loaned to me for such purpose; I represent only my own bonds.

11 x Q. State when, where, how and from whom you obtained each of said bonds; if you say you purchased any of them, state what you paid for each of them, and give the names and residences of those from whom you purchased each of them; and if you say
63 they were purchased on the stock board give the names of all the brokers or agents through whom you made such purchases.

(Complainant's counsel objects to that portion of the question which interrogates as to what complainant paid for his bonds as immaterial and incompetent testimony).

A. I could not answer that question so specifically without dates, which I have not here; nor have I any
64 positive means of telling from what particular parties the bonds came; what bonds I bought I bought from different parties; I bought from brokers, H. T. Morgan for one, No. 35 William street; John Buckley—I can't tell his place now; the bonds I bought from him were bought a number of years ago; he was then in Pine street; John B. Manning was another; I have bought bonds from other parties at auction; I cannot tell all of

whom I have bought Tennessee bonds from during the 65
past eight years, the eight years may be more or less.

(Counsel for complainant objects to the whole of cross question No. 11 as immaterial and irrelevant, and on the ground that it makes no difference from whom the witness bought his bonds and that it is sufficient to establish his case if he is now the owner and holder of the bonds; also moves to strike out the question and answer for the same reason.)

66

(The defendant's counsel applies for continuance of taking of his disposition until the complainant can get the dates, so that he can answer this question specifically, and will move to suppress this disposition unless this cross-question and cross-question 8 are fully and specifically answered as to dates and other matters inquired of before this deposition is closed.)

12 x Q. When, where and from whom did you pur- 67
chase bond 6,303 letter B, which you claim to be a bond of Tennessee?

A. I could not tell you as I never kept so close an identification of the bonds.

13 x Q. Did you inherit or purchase said bonds?

A. I could not answer that question either.

14 x Q. Did you come into the possession of it within the last three years?

A. I could not answer that question either.

15 x Q. How then do you know that the bond belongs 68
to you at all?

A. Because it is honestly in my possession and honestly owned by me.

16 x Q. How do you know that you honestly own the bond, if you cannot tell whether you purchased or inherited it, nor when, where, how or from whom you got it, or what you paid for it?

69 (Counsel for complainant objects as to the price of purchase.)

A. For the very good reason that I have no Tennessee bonds in my possession, except what I have inherited or purchased.

17 x Q. When, where, from whom, how and at what price did you obtain the paper which is claimed to be bond number 6,593, letter B?

A. I apply the same answer in the case of that bond
70 as I did to the other.

(Defendants' counsel excepts to this as being no answer to question put to the witness.)

(Complainants' counsel objects to cross-question No. 17 as immaterial.)

18 x Q. When, where, from whom, how and at what price did you obtain the paper which you claim to be bond number 6284, letter B?

A. I cannot answer that question more specifically
71 than I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

19 x Q. When, where, how and from whom, and at what price did you obtain the paper which you claim to be bond number 6,586, letter B?

A. I give the same answer as I did in the case of the other bonds.

72 (Defendants' counsel excepts to this answer as wholly insufficient.)

(Complainant's counsel asks defendants' solicitor to state what he expects to prove by this line of examination. Defendants' counsel replies that he expects to prove the facts inquired about in the question, either by this witness or

by others, and is laying grounds to contradict witness if he can do so.) 73

(Complainant's counsel moves to strike out the cross-examination which relates in any manner to the identity and proof of the bonds, on the ground that it is admitted by the answer that the corporations-defendants, the Louisville and Nashville Railroad Company, and the Central Southern Railroad Company, and the Tennessee and Alabama Railroad Company received bonds of the State of Tennessee from that State, and negotiated them, and that they are bound to know the bonds which they sold.) 74

20 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,532, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.) 75

21 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,570, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

22 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,621, letter B? 76

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

77 23 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,430, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

24 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be
78 bond number 6,407, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

25 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,580, letter B?

79 A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

26 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,581, letter B?

A. I give the same answer as I did in the case of the other bonds.

80

(Defendants' counsel excepts to this answer as wholly insufficient.)

27 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,630, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel objects to this answer as 81
wholly insufficient.)

28 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,643, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

82

29 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 9,439, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

30 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be 83
bond number 7,901, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

31 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 7,913, letter B?

A. I give the same answer as I did in the case of the 84
other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

32 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 7,935, letter B?

85 A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

33 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 7,942, letter B?

A. I give the same answer as I did in the case of the other bonds.

86

(Defendants' counsel excepts to this answer as wholly insufficient.)

34 x Q. When where how, from whom, and at what price did you obtain the paper which you claim to be bond number 8,012, letter B?

A. I give the same answer as I did in the case of the other bonds?

(Defendant's counsel excepts to this answer as

87 (wholly insufficient.)

35 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 8,024, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

88 36 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 8,061, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

37 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 1,027, letter B? 89

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

38 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 1,052, letter B? 90

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

39 x Q. Where, when, how, from whom, and at what price did you obtain the paper which you claim to be bond number 5,973, letter B?

A. I give the same answer as I did in the case of the 91 other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

40 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,269, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as 92 wholly insufficient.)

41 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,350, letter B?

A. I give the same answer as I did in the case of the other bonds.

93 (Defendants' counsel excepts to this answer as wholly insufficient.)

42 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,383, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

94 43 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,406, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants's counsel excepts to this answer as wholly insufficient.)

44 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be
95 bond number 6,918, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.)

45 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,957, letter B?

A. I give the same answer as I did in the case of the
96 other bonds.

(Defendants' counsel except to this answer as wholly insufficient.)

46 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 6,962, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.) 97

47 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 7,028, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendants' counsel excepts to this answer as wholly insufficient.) 98

48 x Q. When, where, how, from whom, and at what price did you obtain the paper which you claim to be bond number 8,151, letter B?

A. I give the same answer as I did in the case of the other bonds.

(Defendant's counsel excepts to this answer as wholly insufficient.)

49 x Q. Have you sued upon all the bonds which you own which were loaned to said Louisville and Nashville, and Nashville and Decatur Railroad Companies, or do you own other of such bonds upon which you have not sued? 99

(Counsel for complainant objects to the question as immaterial and irrelevant.)

A. I own other of such bonds upon which I have not sued.

50 x Q. Did you own such other bonds at the time these suits were brought? 100

(Same objection.)

A. Yes, sir,

51 x Q. How many of said bonds did you at that time own against each of said railroads upon which you have not sued—give the numbers and letters?

(Same objection.)

101 A. I owned as many as was stated in the bills filed.

52 x Q. Do I understand that you then sued upon only one-half of the bonds which you then held?

(Same objection.)

A. I did not wish to give that impression; you were mistaken.

53 x Q. To illustrate my meaning, you state in your bill against the Louisville and Nashville Railroad that you were the owner and holder of fourteen bonds
102 loaned to that company; and I understood your bill to be filed to enforce your lien for those bonds, and therefore, I regard them as the bonds sued for in that case; I understand you in answer to cross-question 51, to say that you owned as many of said bonds upon which you had not sued, and therefore, I understood that you had only sued upon half of the bonds you owned; if I am wrong please show me how I am wrong?

A. I did not intend to give any such impression; my meaning was that I owned the fourteen bonds re-
103 ferred to in the bill and still own them.

54 x Q. Then, do I now understand, that at the commencement of these suits you did not own any bonds that were loaned to either of said companies except such bonds as you mentioned, and sued upon in the bills filed by you?

A. None that I was aware of.

55 x Q. Have you bought since the commencement of these litigations or otherwise acquired any bonds loaned to either of said companies; if so, how many,
104 from whom, when, and at what price?

(Objected to as immaterial and irrelevant.)

A. I have bought other bonds but I could not state the other particulars.

56 x Q. Did you buy said bonds through brokers or agents, or in person, and if through brokers or agents, who were they?

(Same objection.) 105

A. I have bought bonds since of J. B. Manning, and I think of other parties also, but I am not positive as to the date in reference to the other parties.

57 x Q. Please state the names of the other parties referred to in your last answer?

(Same objection.)

A. The parties I had in mind were H. T. Morgan & Co., and the Real Estate Exchange.

58 x Q. Are they the only parties that you had in 106
your mind, if not, who else passed through your mind?

(Objected to for reasons stated as objections to former questions, and for a further reason that the inquiry is directed to matters which have transpired since the commencement of the litigation.)

A. I may have bought some through Newton Duel.

59 x Q. Are you not quite a large operator or investor in stocks and bonds; what amount of such securities 107
do you own?

(Complainant's counsel objects to the latter part of the question as irrelevant.)

A. I frequently invest in bonds and real estate but seldom, if ever, in stocks; I refuse to answer the latter part of the question as an improper inquiry into my private affairs.

(Defendants' counsel notifies complainant's 108
counsel that he will move to suppress this deposition because of the witness's refusal to answer the last branch of the question.)

(Complainant's counsel insists upon refusal of witness to answer because the inquiry is directed to the complainant's ownership of bonds in gen-

109 eral, and is not confined to the character of bonds in issue in these causes, and therefore involves what seems to be an unnecessary inquiry in regard to his personal affairs.)

(Defendant's counsel disclaims any intention of unnecessarily inquiring into complainant's private affairs, but asks the question with a view of introducing the next two succeeding questions of the cross-examination.)

110 60 x Q. Do you not, either in person or through some clerk, bookkeeper, broker or agent, keep some books, papers or other memoranda to show your purchases and sales of bonds or stocks, and especially of bonds of the State of Tennessee loaned to the railroads involved in these suits?

(Objected to as immaterial.)

A. I keep accounts in respect to Tennessee bonds,
111 but not accurate in all particulars; I mean by that not sufficiently accurate to enable me to answer all the questions asked.

61 x Q. Do you keep that account in person or through some one else?

(Same objection.)

A. I keep it in person.

62 x Q. Is it contained in a book or set of books, or is it contained in separate paper or memoranda?

112 A. Books and, possibly, memoranda.

63 x Q. You will please present to the Commissioner, for his inspection and that of counsel, to enable true copies thereof to be taken and filed with this deposition, all such parts of said book or books, and all such memoranda or papers, as refers to your purchases or other acquisition of bonds of the State of Tennessee loaned to either of the railroads involved in these suits.

(Objected to as immaterial, as too broad and general, and the production of these documents is objected to, unless the Court, upon the hearing of the causes, should deem these matters relevant and material.) 113

A. I will produce the papers so far as I can, provided the Court says it is necessary.

64 x Q. Do you then decline to produce them now or during the taking of this deposition?

(Complainant's counsel objects to the latter part of the question relating to his probable course during the taking of this deposition.) 114

A. I do not object, but I shall do as my counsel advises.

(Complainant's counsel offers, if defendants' counsel will indicate just what he wants, what entries he refers to and what particulars in regard to purchased Tennessee bonds issued to these railroads, he will endeavor to comply with the question.) 115

(Defendant's counsel replies that the books, papers or memoranda not being in his possession, and never having been seen by him, he cannot give any more specific designations of the parts thereof which he wishes to be produced than he has already done in cross-question number 63, and his object in calling for said books or memoranda is to enable him to cross-examine the complainant, and he will therefore move to suppress this deposition, unless such production and inspection is allowed in time to enable him to continue said cross-examination.) 116

65 x Q. Have you not brought suits in the Federal Courts of Tennessee against several other railroads be-

117 sides the Louisville and Nashville and the Nashville and Decatur railroad companies; if so, what other companies have you sued, and upon how many bonds against each?

(Objected to as immaterial and irrelevant to the issues in these cases, and as secondary proof, and all answers thereto objected to until the Court can pass upon the propriety of the question.)

118 A. I object to answer as advised by my counsel.

(Defendant's counsel will move to suppress this deposition, because of the refusal of the witness to answer question.)

66 x Q. Are you the absolute, sole and unconditional owner of each and every bond upon which you have sued the railroad companies of Tennessee other than the Louisville & Nashville and Nashville and Decatur rail-
119 road companies; if not, give the names and residences of each and every person who has any interest in any of said bonds whether as partner, part owner, pledgee or otherwise; state if some of said bonds have not been loaned to you for the purpose of making out a case against said companies, and state if some other person or persons have not some lien upon said bonds or some of them; if so, specify which of said bonds, and give the names of such persons?

120 (Objected to as immaterial and irrelevant.)

A. I am the absolute, sole and unconditional owner of each and every bond sued upon; no bonds have been loaned to me for the purposes stated in the question.

67 x Q. State when, where, how and from whom you obtained each of the bonds upon which you have sued the railroad companies of Tennessee other than the Louisville and Nashville and Nashville and Decatur;

if you say you purchased any of them state when you bought each of them. what you gave for them and the name or residence of the broker through whom you made each and every purchase? 121

(Objected to as immaterial and irrelevant, and any answer objected to until the Court can pass upon admissibility of the question, and further objected to because it does not tend to prove any of the issues in the causes, and counsel for defendants is requested to indicate what he proposes to develop by the question.) 122

(Defendant's counsel proposes to show that the three cases in which these depositions are now being taken are but part of set of cases brought in the Federal Courts of Tennessee against the railroads of that State by a combination of bondholders with headquarters in New York, whose real object is to bull this class of Tennessee bonds. That the litigation has not been instituted and has not been maintained in good faith for 123 the purpose specified in the pleadings, but complainant has been selected as the figurehead of that organization, and has been provided with bonds by those who are in combination with him to set on foot not only the litigations in these three causes, but in the others, with a view of forcing the railroads of Tennessee to compromise debts which they regard themselves as having already paid the State, and one of the objects of this cross-examintion will be to show that such 124 combination exists.)

(Counsel for complainant will waive any objection to any question directed to prove the offer just made by defendant.)

A. I object to answer only so far as my counsel wishes.

125 (Defendants' counsel will move to suppress the deposition for the refusal of the witness to answer this question.)

68 x Q. Have you sold any Tennessee State Bonds within the last nine years; if so, why did you make such sales; where, when and through whom were each and every sale of said bonds made by you?

(Objected to as immaterial and irrelevant.)

126 A. I have sold bonds within the time specified; I refuse to answer more specifically as it unnecessarily inquires into private affairs.

(Defendants' counsel will move to suppress this deposition for refusal to answer the other matters inquired about in the question.)

69 x Q. Have you not at some time or times during the last nine years been engaged in hunting out such of the Tennessee State bonds as were loaned to the various
127 railroads of that State or some of them, and which of them, and in order to get them have you not been buying Tennessee bonds on the market, and thereafter selecting such of them as were loaned to the companies you have sued, selling the others for the best price you could get for them; if so, give the dates of each and every such transaction, the names of every broker employed by you, and state especially, who advised or pursuaded you to that course, and what he or they said in advising or urging you to it?

128 (Objected as too broad in respect of time, and as immaterial and irrelevant.)

A. I will answer or not as my counsel wishes; I have bought bonds as an investment, but never at the advice or suggestion of any one but myself; I did it on my own judgment.

Further hearing adjourned to July 9, 1879, 10 A. M.

July 9th, 10 A. M. 129

Present—Counsel for both parties and the witness.

CALVIN AMORY STEVENS recalled, and cross-examination continued by MR. BAXTER.

70 x Q. Have you not at some time or times during the last two years been engaged in hunting out some of such of the Tennessee State bonds as were loaned to the railroad companies involved in these suits, and in order to get them have you not been buying Tennessee 130 bonds on the market, and after selecting such of them as were loaned to said companies, or to other companies that you desired to sue, selling the others back upon the market?

(Objected to as immaterial and irrelevant.)

A. I have bought such bonds, but have not sold all such that were not on the roads referred to.

71 x Q. Did you not buy them for the purpose of instituting these suits? 131

(Objected to as immaterial and irrelevant.)

A. I was a large owner of Tennessee bonds long before these suits were instituted or thought of.

72 x Q. Did you not own all of the bonds upon which you have brought these suits long before they were brought or thought of?

(Same objection.)

132

A. I should think not, for I have bought a great many bonds since.

73 x Q. As to such of said bonds as you have bought since these suits were thought of, did you not buy them for the purpose of instituting these suits upon them?

(Same objection.)

133 A. I should say that I had amply sufficient bonds to institute suits long before they were commenced or thought of.

74 x Q. Did you have enough bonds against each of the railroad companies you have sued in Tennessee to have given the Federal Court jurisdiction of each of them before these suits were brought or thought of?

(Objected to as immaterial and irrevelant to the controversies in these three suits, and also to any answer until the Court can determine
134 whether we are to try other railroad suits in the course of the trial of these three.)

A. I object to answer as advised by counsel.

(Defendant's counsel will move to suppress this disposition because of the witness's refusal to answer this question.)

(Complainant's counsel offers to proceed *instanter* with the trial of all the railroad cases in
135 the Federal Courts in Tennessee, in which Calvin A. Stevens is complainant.)

(Defendants' counsel replies that he is not of counsel in all of said cases, and has no right to control the trial thereof, but that if complainant is in earnest in stating that he is ready to proceed *instanter* to trial in the five cases in which defendants' counsel is engaged, meaning by the word *instanter* before this deposition is closed,
136 defendants' counsel is ready to go to trial.)

(Complainant's counsel agrees to proceed with those five cases if defendants' counsel will set them for hearing on the 26th day of July, 1879.)

(Defendants' counsel having accepted one proposition made by complainant's counsel, does not feel bound to follow him to another.)

75 x Q. Did you have enough bonds against each of the railroad companies involved in these three suits to have given the Federal Court jurisdiction against each of said companies before these suits were brought or thought of; I mean did you have bonds enough against each of said companies for the past due coupons thereon to have amounted to five hundred dollars against each company? 137

(Objected to as immaterial and irrelevant, and in addition, that it assumes a question of law which complainant's counsel thinks untenable.) 138

A. I owned between one and two hundred thousand Tennessee bonds long before these suits were begun or thought of; I don't know how many of such bonds were issued to the railroads involved in these three suits.

76 x Q. Then, do you know at all that you had enough bonds against these three companies to have given the Federal Court jurisdiction as explained in cross-question 75? 139

A. I do not positively know that I had or had not, but out of so large a number of bonds, it is very fair to suppose that I had.

77 x Q. Did you file your bills against these three companies upon the mere supposition that out of the large number of bonds that you did hold, you had bonds enough against each of them to cover the number of bonds that you stated in your bills you held against them?

A. I did not file any bills on any such presumption; I was the absolute owner and still am of the full number of bonds mentioned in the bills when filed. 140

78 x Q. Out of the fourteen bonds which you stated in your bill that you held against the Louisville and Nashville Railroad, how many of them had you held for as long as three months before said bill was filed?

(Objected to as immaterial and irrelevant.)

141 A. In answer to that question I would state that I don't know, and would have no objections in stating if I did know.

79 x Q. Were there any of those bonds that you had not held for as long as three months before bringing said suit?

(Objected to because the question has been already answered.)

A. I don't know; if I did know I would have no ob-
142 jections in stating.

80 x Q. Did you buy any bonds of the State of Tennessee that were issued to the Louisville and Nashville Railroad Company within three months preceding the filing of said bill?

(Same objection.)

A. I do not know.

81 x Q. How many of the thirteen bonds which you claim in your bill against the Tennessee and Alabama
143 Railroad did you hold for three months prior to your filing your bill against that road?

(Same objection.)

A. In answer to that question I would state that I do not know, and would have no objection in stating if I did know.

82 x Q. Did you buy any bonds of the state of Tennessee issued to the Tennessee and Alabama Railroad within three months prior to your filing your bill
144 against that road?

(Same objection.)

A. I do not know.

83 x Q. How many of the thirteen bonds which you claim in your bill against the Central Southern Railroad did you hold for three months prior to your filing your bill against that road?

(Same objection.) 145

A. In answer to that question I would state that I do not know, and would have no objection in stating if I did know.

84 x Q. Did you at any time within three months prior to your filing said last-mentioned bill buy any Tennesee State bonds issued to said Central Southern Railroad?

(Same objection.)

A, I do not know. 246

85 x Q. Did you not within three months prior to your filing the three bills in these cases buy some Tennesee State bonds, and is it not more than probable that some of the bonds that you did buy were bonds that had been issued to these three companies?

(Same objection, and asking for the opinion of witness.)

A. I do not know.

86 x Q. Please give me your best belief? 147

(Same objection.)

A. I prefer to state only facts of which I have positive knowledge.

87 x Q. Do you decline to give your belief in answer to the question?

(Same objection, and because question has been already answered, and because it assumes that the witness has a belief, which is not proven.) 148

A. I have no objections in giving my belief if I had any particular belief on the question.

88 x Q. Do you believe that any of the Tennessee State bonds that were bought by you within three months prior to the institution of these suits were issued to either of the three railroad companies involved in them?

147 (Objected to, as witness has said he had no particular belief on the question.)

A. I would gladly answer your question if I could; I have given all the facts I know.

89 x Q. I am not now inquiring for facts; I am asking for your belief whether any of the Tennessee State bonds bought by you within three months prior to the institution of these suits were issued to the companies involved in them, and defendants insist that they have
150 the right to call upon the complainant to state whether he has any belief whatever as to the matters inquired about, and state what the belief is, if he has any, whether it be a general or particular belief, whether it be vague or definite?

(Objected to as not calling for testimony, and on the ground that the witness's belief, of whatever character, could not affect the facts as to whether Tennessee bonds purchased by him within the time named in the question were issued to
151 these three companies, and on the ground that he has already said he has no belief on the subject.

A. I decline to answer the question further, except as to any facts which I may know.

(Defendants' counsel will move to suppress this deposition, because the witness declines to state his belief upon recent transactions affecting his title to the bonds in suit, the particulars of which
152 transactions are exclusively within his possession.)

90 x Q. Will not the books, papers, memoranda or account kept by you of your bond purchases, and to which you referred in the previous part of this deposition, give some information as to when and how you became the owner of at least some of the bonds which

you claim to hold against these three companies or 153
either of them?

(Objected to as immaterial and irrelevant; that there is no question of title involved in these cases, the bonds have been produced before the officer of the Court, and no foundation has been laid to dispute their ownership.)

A. I have not the numbers of all the bonds which I have bought and sold recorded in either of my books or 154
memoranda, and therefore they would not give the information sought.

91 x Q. Do you not keep a list of the numbers of all or at least some of the Tennessee bonds which you have bought?

(Objected to as immaterial.)

A. I have the numbers of many of the bonds, and of others I have not. That is, I have kept a list of numbers of many of the bonds, but there are others of which the 155
original numbers I have not; that is to say, so that I can distinguish where I bought them, and whether I bought them myself or whether they were given to me by my father.

92 x Q. What is meant by the expression "original number?" Do State bonds carry more than one number?

A. I mean that I have not the numbers of the original bonds given me by my father, such bonds have been mixed with recent purchases, and other bonds 156
which I have individually owned for years before my father's death, so that I cannot distinguish them.

93 x Q. Have you a list or any memoranda of the numbers of the bonds, or any of them, that you have purchased or otherwise acquired since your father's death, and excluding those which you got by inheritance from him?

157 (Objected to as being too broad, not relating to the bonds in these suits, immaterial, and that the bonds themselves will be the best evidence.)

A. I have a list of all the bonds which I at present own, but I have not a list of many bonds which were given me by my father, as also many bonds which I have sold.

94 x Q. Have you a list or memoranda of the bonds which you still hold, but which you did not acquire
158 from your father?

(Same objection.)

A. I have not such a list. The bonds have all been mixed more or less.

95 x Q. Have you a list of any of the Tennessee bonds inquired of in the cross-question 94, and, if so, please produce it and give us a copy?

159 (Complainant's counsel objects to the production of any such paper as not directed to bonds involved in these suits, and such a list of numbers would be immaterial.)

A. I will furnish all my books and papers in reference to my Tennessee bonds, if the Court shall so order, but otherwise I decline to do so, as I consider it an unwarranted intrusion into my private affairs.

96 x Q. If said list was produced, would it show the dates when you purchased or otherwise acquired any
160 of said bonds?

(Objected to as hypothetical.)

A. My books would show the dates in many instances.

97 x Q. Would your books show from whom or through whom you acquired any of said bonds?

(Same objection, and as immaterial.)

A. My books would show the amount of bonds re- 161
received from different parties, but not in all cases the numbers.

98 x Q. Would they show the numbers obtained from particular parties in any case or cases?

A. By my books I think could trace them in many cases.

(Defendants' counsel here notified complainant's counsel that his object in calling for said books and papers is to see if they will not furnish some evidence that will aid in ascertain- 162
ing when, how, and for what price the bonds sued on in these cases were obtained, and will move to suppress this deposition because that information is withheld.)

(Complainants' counsel cannot waive any objection to the production of books to show when, how and at what price the complainant bondholder obtained his bonds, the material question being, was he a bondholder when these suits were 163
commenced and is he a bondholder now?)

(Complainant does waive any objection to any question which defendants may put purporting to show that the bonds were obtained for the bull movement claimed by defendants, and defendants may ask without objection whether any of the complainant's bonds were obtained from any member of the committee of Tennessee bondholders or from Brown Brothers, or Maitland, Phelps & Co., or Ward, Campbell & Co., or from 164
the firm of Barings, of London, or from any of the combination of Tennessee bondholders, or any one acting on their behalf.)

(Complainant's counsel notifies defendants' counsel that he will ask for the same privilege of examination of Richard T. Wilson and the other

165 parties interested in railroad rings that have been engaged in "bearing" Tennessee bonds since 1870.)

(Defendant's counsel accepts the courtesy extended to him by complainant's solicitor, and extends to him the fullest reciprocity.)

99 x Q. I understand you in your previous examination to have stated in substance that within three months preceding the bringing of these suits you had
166 purchased some Tennessee bonds on the market? Please state what your object was in making said purchases?

(Objected to immaterial and irrelevant, and as not affecting the issues, whatever complainant's object in effecting the purchases may have been.)

A. I bought them because I had funds to invest, and thought them a good investment.

100 x Q. Was the State of Tennessee paying the in-
167 terest upon her bonds at the time?

(Objected to as not the best evidence and immaterial.)

A. She was not three months before the filing of the bills.

101 x Q. When was the last time prior to the filing of your bills that the State of Tennessee paid her semi-annual interest on her bonds here in New York?

(Objected to as not primary evidence and
168 because the defaults of the State of Tennessee on her bonds are admitted by the pleadings in these suits, and any answer objected to.)

A. I object to answering by advice of counsel.

(Defendants' counsel will move to suppress this deposition because of the refusal of the witness to answer this question.)

102 x Q. Is it not a fact that the State of Tennessee had not paid the interest upon her bonded debt for more than two years prior to your filing the bills in these cases? 169

(Same objection.)

A. I object to answer by advice of counsel.

(Defendants' counsel will move to suppress this deposition because of the refusal of the witness to answer this question.) 170

103 x Q. Is it not a fact that with the exception of some interest paid in 1867 and 1868, and some paid in 1874 and 1875, the State of Tennessee has paid no interest since the commencement of the late war?

(Same objection.)

A. I object to answer by advice of counsel.

(Defendants' counsel will move to suppress this deposition because of the refusal of the witness to answer this question.) 171

104 x Q. Are you in the habit of investing your capital in the bonds upon which the interest has been in default for a series of years prior to your purchase, or do you generally seek interest-bearing and interest-paying securities?

(Objected to as not calling for testimony, as immaterial and irrelevant, and because the witness is not bound to furnish the principles on which he proceeds in investing his capital, and further, because it assumes that these bonds are not interest-bearing securities with paramount liens on the railroads of Tennessee, and I object to any answer on the same ground.) 172

A. I object to answer by advice of counsel.

173 (Defendants' counsel will move to suppress this deposition because of the refusal of the witness to answer this question.)

105 x Q. Is it not a fact in regard to every Tennessee bond issued to the railroads involved in these suits, that you bought at any time within twelve months preceding the institution of the suits, that it was bought by you with the express purpose of instituting suits to enforce the lien which you claim to exist upon said
174 railroad, and did you not look to the proceeds of such litigations as the means of realizing upon your investment, and is not that your real meaning when you say that you bought them as an investment?

(Objected to as immaterial and irrelevant.)

A. I could not say that that was the real fact.

106 x Q. Was not that your principal, chief motive?

175 (Same objection.)

A. I could not say as to every bond bought within twelve months before the litigation; but as to the majority of bonds bought immediately before or after the litigation, I bought such believing them to be a first mortgage lien on the roads to which they were issued, and believing them to be a good investment.

107 x Q. What length of time are we to understand that you mean to cover by the word "immediately"?

A. Well, within a few months—after I read the
176 statute under which the bonds were issued.

108 x Q. What do you mean by a "few months"?

A. Less than twelve months; within the twelve months.

109 x Q. You state in cross-question 106, that you bought such bonds "believing them to be a first mortgage lien on the roads to which they were issued, and believing them to be a good investment;" now, do you believe

that they would be a good investment unless they are a 177
lien, as you clam them to be?

(Objected to as calling for witness's opinion, and as immaterial.)

A. I would not regard any except Tennessee lien railroad bonds a prudent investment.

110 x Q. Would the lien add anything to the value of the bonds as an investment unless said lien could be enforced?

A. I should say that it would not, but I believe that 178
it will be enforced.

111 x Q. Then, I asked you in cross-question 105, did you not buy your Tennessee railroad lien bonds with the express purpose of instituting suits to enforce such liens?

(Objected to because it is based on an inference not warranted by the previous answer that the witness, and not other bondholders, might institute suits for the enforcement of the liens on the 179
railroads.)

A. Many of my Tennessee bonds were owned long before I anticipated any necessity of instituting the suits to enforce my rights.

112 x Q. Please answer my question then as to such of said bonds as you did not own long before you anticipated the necessity of bringing such suits?

A. I have every reason to believe that I owned a sufficient number of bonds to fully test the question with- 180
out making any additional purchases; I made such additional purchases because I believed them to be a good and legitimate investment.

113 x Q. You are again asked to state if you did not make such additional purchases with the express purpose of instituting suits to enforce said lien?

A. No, sir; not for the express purpose, as I have

181 every reason to believe that I already owned sufficient bonds to test the question.

114 x Q. When you bought said additional bonds, did you do it with the express purpose of embracing them with your original bonds in the suits which you afterwards brought to enforce said lien?

(Objected to as immaterial and irrelevant, and because it does not appear from the proof adduced here that other bondholders did not intend
182 to file bills to enforce their railroad liens, and because it has already been claimed by the defendants on the taking of this deposition that these bills were filed in pursuance of a combination among the bondholders; and further, because these bills are filed on behalf of other bondholders in like interest with the complainant.)

A. I bought them as a legitimate investment, not for the express purpose of instituting these suits; I should
183 never have instituted any suits had I not been a large owner for a long time before I anticipated the necessity of enforcing my rights.

115 x Q. My question was, did you not buy said bonds with the express purpose of embracing them with your original bonds in the suits which you afterwards brought to enforce said liens; you answer that you did not buy them for the purpose of instituting these suits; please answer the question as asked?

184 (Same objection.)

A. Not necessarily for the express purpose, though of course, if I afterwards decided to institute suits, I expected to include any bond that I owned.

116 x Q. Had you not made up your mind to institute such suits before you made these additional pur chases?

A. I had not; I awaited Charles O'Conor's opinion—

after a thorough examination on his part of the question—before I decided to institute the suits. 185

117 x Q. Do you refer to the printed opinion of Mr. O'Conor published in New York, in pamphlet form in March, 1879?

(Objected to as immaterial, and because the complainant is not bound to give all the mental processes by which he reached a determination to compel these railroad companies to pay the bonds made liens on them respectively by the Statute. And further, because Mr. O'Conor's opinion furnishes the best evidence of its own contents. I waive the production of the original and consent that defendants may put in a copy, and I object to any answer.) 186

(Defendants' counsel declines to file either the original or a copy of said opinion of Mr. O'Conor, because, as complainant's counsel has so often said, it is immaterial and irrelevant to the issue.) 187

A. I object to answer by advice of counsel.

(Defendants' counsel will move to suppress this deposition, because this question is not answered.)

118 x Q. Were you aware prior to your purchase of any of the bonds sued on in either of these cases that the railroads which you have sued denied that said bonds were a lien upon their property?

A. I cannot answer as to these particular bonds. 188

119 x Q. Did you not know at the time of said purchases that the said railroad companies denied that any Tennessee bonds loaned to them were a lien upon their property?

A. I cannot say as to these particular bonds, for I don't know how long I have owned them.

120 x Q. For how long a time prior to the institution

189 of these suits were you aware of the fact that said railroad companies denied that the bonds loaned to them by the State of Tennessee were liens upon their property; if you cannot state exactly come as near to the time as you can?

A. Somewhere within three years, I suppose.

Adjourned by consent to July 10th, 1879, 10 A. M.

190

JULY 10th, 10 A. M.

Present—Counsel for both parties, witness, and cross-examination continued by Mr. Baxter.

121 x Q. In cross-number 110, you answer that you believe that the lien which you claim to exist in favor of your bonds will be enforced; upon what do you ground that belief?

191 A. First, because the Statute under which the bonds were issued in plain and positive language declares the bonds themselves to be liens; secondly, because the highest legal advice that I could obtain advised me to that effect.

122 x Q. Have you any other reasons than those you have just stated for the belief you entertain?

A. The arguments and briefs which I have read from counsel on the other side further strengthen that belief.

192 123 x Q. Have you still any further grounds for that belief than those you have just stated; if so what?

A. I have; the active interest which the several railroad companies have shown towards affecting a State settlement since the filing of the bills further strengthen my belief; also the getting up of the Delmonico dinner, and the placing there of mere figure-heads who misrepresented the bondholders as generally

assenting to the fifty and four per cent. compromise also strengthen my belief; also the misrepresentation as to the number of bondholders and the amount of bonds which are represented to have assented to the proposed State settlement strengthen my belief. 193

124 x Q. Have you not still another secret reason for your belief which you have not yet divulged?

A. I have not a secret reason, though I have other reasons.

125 x Q. Will you please state all of those other reasons? 194

A. I refer to the delays and obstructions of the railroad companies in order to postpone the hearing of the causes.

126 x Q. Have you not received either from your counsel or from others certain assurances upon which they and you contemplate success upon the peculiar line of attack which you have adopted, that you have not yet disclosed, and are you not relying with very great confidence upon these assurances?

A. The fact that the railroad companies snatched this question away from the Supreme Court of the United States, while that body had the case under advisement, and that the companies were apparently unwilling that the Court should render a decision, are additional reasons for my believing that this great wrong will finally be righted by that Court; I have no secret reasons whatever. 195

127 x Q. I again ask: have you not received either from your counsel, or from others, certain assurances upon which they and you contemplate success upon the peculiar line of attack which you have adopted; please answer that question? 196

A. I deny having received such assurances.

128 x Q. Have you not heard either in person, or through others, certain facts which you have not yet communicated that tend to strengthen your confidence?

A. I have endeavored to give the facts which strengthen my convictions as to the right of our cause;

197 I will gladly state any particular facts to which counsel may have reference, if he will state them.

129 x Q. Have you no reasons for anticipating success other than your own belief in the justice of your cause, the strength of your own counsel's argument, the weakness of the arguments of your adversaries, and the panicky conduct of the railroads which you have described above?

(Objected to as question is already answered, and as immaterial and irrelevant.)

198

A. The efforts of numerous honest and intelligent men in Tennessee to prevent that legislation by which the railroad companies, in collusion with the State, sought to deprive the bondholders of their rights, further strengthens my convictions; I think of no other reasons at this time.

130 x Q. In your answer to cross-question 123, you allude to the active interest which the several railroad companies of Tennessee have shown towards affecting a
199 State settlement since the filing of your bills; do you not know it to be a fact that the railroad companies of Tennessee have always and long before your bills were filed or thought of been earnest and open advocates of the State credit of Tennessee; have they not always aided every committee of bondholders that you have ever sent to that State, as far as it was believed by the bondholders and the railroad companies that it was prudent, having regard to the interest of the bondholders that they should aid you; and was it not
200 publicly charged by the present Governor of Tennessee in his inaugural message that the railroads and bondholders have always been in collusion to make the people of the State of Tennessee pay its bonded debt; and have not you quoted at great length in a petition which you have filed for a receiver of the Nashville & Decatur Railroad, and from another message of that same Governor, thus endorsing him to this Court as a

competent and reliable exponent of the politics of Tennessee? 201

(Complainant's counsel objects on the ground that the Governor's message is the best evidence of its contents, and insists on the production and adducing of the document, or a copy, or such parts thereof as refers to this question; and as to the portion of the question referring to the contents of the petition for a receivership of the Nashville & Decatur Railroad, he objects on the ground that the records of this Court are their 202
own best evidence, and he objects to any answer being made to those portions of the questions referring to the Governor's message and the petition on file.)

A. On the contrary, I know by the recent State investigation that the Memphis and Charleston Railroad Company employed disreputable means which injured the credit of Tennessee and depreciated the bondholders' securities; it was done for the express purpose of 203
inducing the bondholders to sacrifice their bonds and enable the railroad company to buy them at the lowest possible figures, and turn them into the State at par; it is believed in well-informed circles that a combination in this city, in the interest of railroad purchasers, made short sales of the bonds for the same purpose; it is also believed in well-informed circles that railroad companies in Tennessee taught the State of Tennessee the first lesson in repudiation; I don't deny but what after the railroad companies had secured all the bonds they 204
wished, that they then sought to build up the credit of the State again for their own selfish purpose; they have sought to get present outstanding bonds retired in order that they might be free from all liability to the original bondholders from whom they obtained the capital to build their roads.

The railroads may profess to have assisted the bond-

205 holders, but, in truth, for the express purpose of extricating themselves, at least treating the bondholders' interest as a very secondary consideration.

I object to repeat documents which would speak for themselves, by advice of counsel.

(Defendants' counsel insists that he has not called for the documents mentioned, or either of them, and will move to suppress this deposition, because the witness declines, has not answered
206 as to the facts called for by the last clause of the question.)

131 x Q. You state in your last answer, that you know by the recent State investigation that the Mrmphis and Charleston Railroad Company employed disreputable means which injured the credit of Tennessee; have you any personal knowledge of that fact yourself?

(Objected to because witness has already stated
207 the source of his knowledge.)

A. I base my assertion on the records which clearly prove it.

(Defendants' counsel now excepts to so much of witness' answer to cross-question No. 130, as refers to the Memphis and Charleston Railroad Company, because it appears that he has volunteered a statement with reference to which he has no personal knowledge, and of which, if true
208 at all, the records to which he refers are the best evidence.)

(Complainants' counsel insists that the answer is responsive to the question which extended to all the railroads of the State, and produces for inspection of the Commissioner and counsel present the sworn testimony taken before a Committee of the Tennessee Legislature on the matter referred to by the witness.)

132 x Q. Do you not know as a fact, that the plan by 209
which most, if not all, of the railroad companies of Tennessee bought the State bonds with which they retired their debts to the State of Tennessee, was to employ brokers or bankers in New York to sell the bonds of the companies, and with the proceeds arising therefrom, said brokers or bankers purchased bonds of the State of Tennessee on the open stock market of New York; that the companies made no purchase of State bonds directly, and had nothing to do with the means or devices usually resorted to by such brokers 210
or bankers to depress the value of securities for which they have orders to buy?

A. I know that those very bankers or agents were the principal managers of and very large owners in the companies whose bonds they purchased.

133 x Q. Please state what bankers and brokers you refer to, and what companies you refer to?

A. Messrs. Wilson & Iselin. I refer to those companies of which they are managers and stockholders in.

124 x Q. Of what companies are they managers and 211
stockholders?

A. I have understood that they are largely interested in East Tennessee, Virginia and Georgia, Memphis and Charleston, and very likely other roads.

135 x Q. Do you intend any of the language you have used, relating to the depression of State credit, to refer to the Louisville and Nashville, or the Nashville and Decatur Roads, or to any of the officers or managers of either?

A. I believe that all the railroad companies of Ten- 212
nessee have been and still are in very close communion, though in different degrees of guilt.

136 x Q. Will you have the frankness to make a specific charge against either of said companies or the managing officers thereof, implicating them in any attempt at any time to depress the credit of the State of Tennessee, giving names and dates with the facts which you charge?

213 (Objected to because counsel asked in reference to the conduct of all the railroad officials of Tennessee, and the witness answered as to those within his knowledge. Further, because this is a Court to try the liability of these railroads for their debts, and not for the reception of charges against their officers. When these companies have paid the Internal Improvement Bonds issued to them, and are seeking reclamation from the State, the testimony here sought may be mate-
214 rial, but the witness has now nothing to do with controversies between the companies and the State. I object to any answer, and give notice that on the reading of this deposition I shall move to strike out all of the questions and answers referring to the efforts of the railroad companies to secure a settlement by the State, and all other matter in this deposition not relevant to the issue.)

215 A. I object to any answer, because my counsel so advises.

(Defendant's counsel will move to suppress the deposition because the witness has refused to answer this question.)

137 x Q. You say in your answer to cross-question 130, that it is believed in well-informed circles that a combination in this city in the interest of the railroad purchasers made short sales of the bonds for the same
216 purpose, meaning to depress the credit of the State; please state who belong to those well-informed circles, and who compose the combination which you there refer to?

(Objected to as having nothing to do with the case, and all answer objected to.)

A. I object to answer, because my counsel so advises.

(Defendants' counsel will move to suppress the deposition because of the refusal of the witness to answer.) 217

138 x Q. You state in your answer to cross question 130, that is also believed in well informed circles that the railroad companies in Tennessee taught the State of Tennessee the first lesson in repudiation; please tell us who composed those well-informed circles, to which railroad companies you refer, and to what lesson in repudiation? 218

(Complainants' counsel requests defendants' counsel to point out the issues in the pleadings to which the question is relevant.)

(Defendants' counsel replies it is alleged in the bills filed against the Nashville and Decatur Railroad Company, that the State of Tennessee and the railroad companies had been in default during the late civil war, and had not paid the interest on the bonds issued to the companies; that the market value of the bonds had meanwhile fallen very greatly; that under these circumstances, the officials of the railroad companies conceived the project of avoiding the liabilities of these corporations for the payment of the bonds loaned to them; that their project was to treat the lien on the railroads as the absolute property of the State without regard to the trust in favor of the holders of the bonds whose moneys the companies had received; that they purposed to induce the Legislature to proceed upon this basis and to assign the lien on each road in consideration of the receipt by the State of an amount of its bonds from each company, without regard to whether they were bonds loaned to the company delivering them or not. That they applied themselves to the procurement of such acts of the General Assembly of 219 220

221 Tennessee as they deemed would assist them in the accomplishment of their project; and further, that the railroad companies knew that they were engaged in an attempt to grasp the security and property conferred by the statute upon bondholders. These averments are denied in the answer, and one of the objects of this cross-examination is to disprove said averments, and the object of this particular question is to get the names of the parties who are said to have entertained a certain belief, with a view of asking those parties whether they entertain those views or not.)

222

(Complainants' counsel insists that the quotation from the bill does not present any issue in regard to the repudiation of its debt by the State of Tennessee. Complainant's solicitor further presents to the commissioner, and asks that it be attached to this deposition, a copy of the following notice served and filed in these causes, and marked Complainant's Exhibit 4, July 10th, 1879.)

223

A. I object to answer because my counsel so advises.

(Defendants' counsel will move to suppress this disposition because of the refusal of the witness to answer this question.)

139 x Q. In your answer to cross-question 125, you refer to the delays and obstructions of the railroad companies in order to postpone the hearing of the causes; do you refer to these three causes?

224

A. I do.

140 x Q. Did not these defendants file their answers in these causes within the time allowed them by the rules of the Court as established by the Supreme Court of the United States?

(Objected to because the record is the best evi- 225
dence, and I object to any answer, and for immateriality.)

A. I object to answer.

(Defendants' counsel will move to suppress this deposition because of witness' refusal to answer this question.)

141 x Q. Has the three months allowed by the 69th Equity rule for taking testimony in these causes yet 226
expired, and do you not know the fact that until those three months do expire you have no right to call the cases for trial?

(Objected to as not the best evidence, and because immaterial to the issues.)

A. I object to answer.

(Defendants' counsel will move to suppress this deposition because of the refusal of the wit- 227
ness to answer.)

142 x Q. Please explain then what you mean by the delays and obstructions referred to in your cross-answer number 125?

A. I refer more particularly to the fact of the defendants having applied to the Court for an extension of time after having already admitted that it was not necessary.

143 x Q. Who informed you that the defendants had 228
ever made any such admission?

(Objected to as not being within the issues of the causes, and I object to any answer further, because the records in the causes state the condition of the litigations in respect to delays and otherwise.)

A. I object to answer.

229 (Defendants' counsel will move to suppress this deposition because of the refusal of the witness to answer the question.)

144 x Q. Was not the extension of time of which you complain granted by the United States Circuit Judge at Nashville, in open Court and in the presence of your counsel, and did not the Judge decide that the defendants had shown good cause for the extension of time granted?

230 (Objected to because the record is the best evidence, and I object to any answer.)

A. I object to answer.

(Defendants' counsel will move to suppress the deposition because of the refusal of the witness to answer this question.)

145 x Q. Do you know of any other litigation involv-
231 ing such issues and amounts as you claim to be involved in these suits that was ever forced to a hearing in so short a time after it was commenced? If so, please give us a reference thereto.

(Objected to because not relevant, and as calling for witness's opinion as an expert, and any answer objected to.)

A. I object to answer.

232 (Defendants' counsel will move to suppress this deposition because of the refusal of the witness to answer this question.)

146 x Q. Is not this the first deposition that you have given the defendants notice that you desired to take any testimony in either of these three cases, and have you taken any proof at all in any of the other cases that you have brought against the railroad companies in Tennessee?

(Complainant's counsel objects to the first part of the question because the records are the best evidence, and to the second part of the question because litigations with other railroad companies are not relevant to these cases.) 233

A. I object to answer.

(Defendants' counsel will move to suppress this deposition because of the refusal of the witness to answer this question.)

147 x Q. Please explain your motive in holding back your testimony in these three cases until the time allowed by the 69th Rule for taking proof has nearly expired? 234

A. The question at issue rests on the interpretation of the Statute; all necessary testimony could be taken in a very short time; I regard the taking of so much testimony on the part of the defendants as intentionally for the purpose of encumbering the record and postponing the trial; I had no motive, nor have I intentionally delayed the taking of the little testimony that we care to. 235

148 x Q. Then, if I understand you, you think that nobody has any right to take any proof in this case but you; how did you expect the defendants to be able to get up their testimony within the short time now allowed them, even if they wished to confine their testimony to contradicting your deposition, if such testimony can be found?

(Objected to as immaterial and irrelevant and calling for the opinion of an expert.) 236

A. You certainly do misunderstand me; I desire that the defendants should have the fullest liberty to take all testimony that bears on the question at issue.

149 x Q. Have you any other oral proof which you expect to offer in these cases, if so, give me the names of the witnesses whom you expect to examine?

237 A. I know of none decided upon at this time.

(Complainant's solicitor states that he does not expect to adduce any further oral testimony as the notice of resting served on defendants' counsel some days since has already indicated. Complainant's solicitor requests defendant's solicitor to state the names of any witnesses he proposes to call, if any.)

238 (Defendants' counsel has not such memoranda with him as will enable him to do this; but he expects to introduce a number of witnesses to support the averments of the answers filed in these cases, and to controvert various statements in this deposition.)

(Complainant's solicitor desires to know when defendants' solicitor can furnish him with the names of witnesses.)

239 (Defendants' counsel will serve him with written notice of the names of those witnesses after the complainant's proof is closed.)

150 x Q. Please state your real motive for the extraordinary vigor with which these cases have been pressed to trial?

(Objected to because it assumes a fact not proven.)

240 A. Because there is no good reason why they should be further postponed.

151 x Q. Have you not previously stated that you bought or held these bonds as an investment, and do you not know that if they are a first lien upon the railroads which you have sued, that said roads, when brought to sale, will bring far more than enough to pay every bond and coupon loaned to them by the State of Tennessee which are now outstanding?

A. I do not know that fact, but believe it to be so; 241
but I had rather have what is due me in my own possession than in the treasury of the Louisville & Nashville Railroad Company.

152 x Q. Have you not got the bonds in your possession now, and if they are first liens upon such valuable property, how is it possible for the Louisville & Nashville Railroad Company to deprive you of them or of the interest that may accrue upon them hereafter, and can you possibly get a better investment than six per cent. first mortgage bonds upon such property, consid- 242
ering the small amount now outstanding?

A. I have the bonds in my possession; I have other reasons for preferring to have my own outside of the treasury of the Louisville & Nashville; this unnecessary delay in the trial of the causes is largely increasing the costs of the litigation, aad while the Louisville & Nashville Railroad Company may be solvent to-day, it is not certain it will be years hence.

153 x Q. If your bonds are first liens upon these railroads, are they not amply secured whether the Louis- 243
ville & Nashville Railroad Company remains solvent or not?

A. I do not know that fact, nor does it excuse the injustice of the Louisville & Nashville Railroad Company in withholding the interest on my bonds, which it agreed by the express terms of the Statute to provide for, and which it did provide for during many years.

154 x Q. Do you not believe that said railroads are ample security for your bonds independent of the solvency of the Louisville & Nashville Railroad Com- 244
pany?

A. I believe that the security is amply good at this time, but that the unnecessary delay of the defendants is causing me daily loss.

155 x Q. Please state how such delay is causing you any loss, defendants not admitting that there is any such delay?

A. The expenses of the litigation are large, and it is

245 occupying my time to the detriment and loss of other interests.

156 x Q. How many days of your time has this deposition taken, and who gave notice to take it?

(Objected to as not the best evidence, and the answer objected to.)

A. I decline to answer.

246 (Defendant's counsel will move to suppress this deposition because of the refusal of the witness to answer.)

157 x Q. It the Court should decree a sale of these roads to pay the amount claimed by you, would you not immediately thereafter seek an investment for money received by you from the sale; are you in need of the money involved in these litigations except for the purpose of getting it to re-invest in other modes?

247 (Objected to as immaterial and irrelevant and any answer objected to.)

A. I certainly would seek a re-investment, but not in a State where capital is so insecure as in Tennessee, and where trusts are so flagrantly violated and sacred obligations so frequently dishonored.

158 x Q. Having made your speech, will you oblige me by a respectful answer to a respectful question, and tell me whether you need the money involved in these litigations except for the purpose of getting it to re-in-
248 vest in other modes?

(Objected to because the question has been already answered, because it is immaterial and irrelevant, and because the rights and remedies of parties are not adjudicated upon the basis of their necessities or absence of necessities, and because the statement of the character of investments which complainant would seek when he

receives the overdue interest upon his bonds was 249
a fair reply to his question and not a speech. I
also object to any answer.)

A. I object to answer.

(Defendants' counsel gives notice that his object in this part of the examination is to show that there is no pressing necessity either for the immediate hearing of these cases nor for the appointment of a Receiver over the Nashville and Decatur Railroad, and he will move to suppress 250
this disposition because of the refusal of the witness to answer this question.)

159 x Q. You have stated in cross-question 153, that the Louisville and Nashville Railroad Company provided for the interest on your bonds during many years; do you state this fact of your own knowledge or have you ever heard any one else state such to be the fact, and if so, who?

A. I state that as a fact, because the Act under which 251
the bonds were issued specially provided that the Louisville and Nashville Railroad Company should provide for the semi-annual interest on all bonds issued to that Company or furnish satisfactory evidence that said interest has been paid; the penalty for not providing the interest would have undoubtedly been enforced by the State had the terms of the Statute not been complied with; no such penalty was ever enforced.

160 x Q. You then state as a matter of fact what you had only reasoned out as a matter of argument; 252
am I correct?

A. No, sir; I state it as an undisputed fact, that the Louisville and Nashville Railroad Company has never been foreclosed or to my knowledge in the hands of a receiver.

161 x Q. And do you not argue from that fact, that the Louisville & Nashville Railroad Company must have provided the interest upon the bonds loaned to it, and

253 is not that the only way that you come to the conclusion that it did not provide for them?

A. Certainly; those are some of my reasons for making that assertion; moreover, the Ex-Treasurer of the Bank of Tennessee informed me that such was the case.

162 x Q. Did he tell you that the Louisville & Nashville Railroad Company have ever paid to any holder of bonds loaned by the State to that Company the interest due thereon?

254 A. He said that the railroad companies paid their interest on their bonds through the Bank of Tennessee as their agent, paying their agent the cost and commission attending such payment; nor did he deny that the railroad companies had the right by law to pay the interest directly themselves.

163 x Q. My question was, did he tell you that the Louisville & Nashville Railroad Company had ever paid to any holder of bonds loaned by the State to the company the interest due thereon; please answer yes or no

255 to that question.

A. I have no recollection of his ever making such an assertion, nor of my asking him that question.

164 x Q. Did he not say to you that the Louisville & Nashville Railroad Company was in the habit of depositing in the Bank of Tennessee an amount sufficient to pay the interest with exchange, &c., upon the bonds loaned by the State to that company?

A. He said that the railroad companies were in the habit of so doing.

256 165 x Q. Were the bonds payable in Nashville or in New York?

A. In New York.

166 x Q. The Bank of Tennessee, then, could only then have paid the interest through some agency in New York; is this true?

A. I do not understand it so.

167 x Q. Was it your understanding from him that the coupons were paid in Nashville by the bank there?

A. I understood that the bank of Tennessee, as agent, 257
paid the money into the Treasury of Tennessee (the bondholders' trustee), who, in turn, provided for the payment of the interest in New York.

168 x Q. Through whom did the Treasury of Tennessee make payment here in New York, as you understood?

A. Through banks in this city; such as the Fourth National and the Bank of Republic, I understand.

Adjourned to July 11, 1879, at 10 A. M., by consent. 258

JULY 11th, 1879, 10 A. M.

169 x Q. In your answer to cross-question 161, you speak of the ex-treasurer of the Bank of Tennessee; what was his name, and when did he make the statements you refer to?

A. I do not at this moment remember his name— 259
Morton I think—the statement was made since January, 1879.

170 x Q. In your answer to cross-question 168, you speak of the Fourth National Bank of New York as being one of the banks through whom the interest was paid upon the Tennessee bonds loaned to railroads; was not that bank organized after or during the late war?

A. I do not know; I am not so positive as to the Fourth National Bank as I am in reference to the Bank of the Republic. 260

171 x Q. Have you ever presented any coupons of Tennessee bonds loaned to railroads for payment; if so, did you present them to the railroad companies to whom the bonds had been loaned or to some bank or banks in New York?

A. I have never presented any coupons to any railroad companies direct.

261 172 x Q. When presenting them for payment did you have your coupons assorted according to the different roads to which they had been loaned, or did you have all the coupons of your railroad lien bonds mingled together and present them all for payment in a batch or block?

A. I have no recollection of collecting any Tennessee coupons in person.

173 x Q. Through whom did you collect them; please give me the names of all the parties whom you can now
262 remember?

A. As I recollect, my father collected them; myself being much of the time absent from the city.

174 x Q. Have you any counsel or attorneys employed in either of these suits, except the counsel whose names appear to be signed to the bills; if so, please state who they are and where they reside?

A. I have positively employed none except Judge Hoadly and Mr. Andrews.

175 x Q. Have you not a solicitor or attorney at Nash-
263 ville, upon whom notices to take depositions in these cases can be served; if you have, state his name?

A. Mr. Sam. Watson is employed by my counsel as agent for me though not by myself in person.

176 x Q. Has your counsel employed any one else at any other place except Mr. Watson; if so, who?

A. He has also employed other counsel at Knoxville, Memphis and Louisville; the record shows I suppose.

177 x Q. Is the compensation you are to pay your counsel and attorneys precisely the same if you lose
264 these suits, as if you gained them; if not what difference?

A. I should say that it was.

178 x Q. Is your agreement or any memorandum thereof, in regard to such compensation in writing?

A. I pay my counsel as I go along, and have no agreement in writing.

179 x Q. Are they to receive any part of the bonds or

coupons upon which these suits have been brought as a 265
part of their compensation?

A. They are not.

180 x Q. Are you alone engaged in the prosecution of these suits as complainant; if not, give the names of each and every person who has agreed to aid you in the prosecution of said suits, or any of them, and of every one who has contributed or promised to contribute towards the fees and expenses of said suits?

A. All these suits were begun independently by my- 266
self, and I have paid all expenses to date; I begun them on my own judgment, not relying on the assistance of any other bondholders.

181 x Q. Is there not an association or organization of some of the holders of Tennessee bonds loaned to railroads, the object of which is in part to assert a lien upon said railroads in favor of said bondholders, and are you not a member of said association or organization and an officer thereof?

A. I am the Treasurer of the Committee of Tennessee 267
Bondholders; the object of the association is in part to assert a lien upon said railroads in favor of said bondholders.

182 x Q. Did not said committee or organization a short time prior to May 17th, 1879, decide to adopt the suits which you had previously instituted in the Federal Courts of Tennessee; did they not invite all bondholders who might wish to secure the benefits resulting from said litigations to sign a certain paper, the heading of which is here filed and marked "Defendants' Exhibit No. 1, 268
July 11th, 1879," and was it not one of the conditions upon which such bondholders were allowed to come in to these suits that they should deposit "with the committee five dollars per lien bond in cash and one past due coupon from each bond of that description," the same being "required to defray the necessary costs and expenses of the litigation," and was it not represented by the Committee that "in no event will the

269 bondholders be called upon for any further assessment, nor do they incur any personal liability by uniting in this plan; should any surplus funds remain in the hands of the Committee after all other expenditures have been provided for, the same will be returned to bondholders *pro rata;* those who do not comply with the aforesaid conditions will be excluded from the benefits derived from the action of the committee?"

A. The committee did decide to adopt my suits; they did invite bondholders to sign the paper filed as
270 "Defendants' Exhibit No. 1, July 11th, 1879;" such were the conditions and, speaking in behalf of the Committee, the agreement on their part will be faithfully carried out.

183 x Q. Did not said committee engage certain counsel at New York and Cincinnati to be assisted by competent counsel at Nashville, Memphis, Knoxville and Louisville to aid in the prosecution of said suits?

A. They have not as yet.

184 x Q. Are not said counsel, or some of them, now
271 actively engaged in the prosecution of these suits?

A. They are actively engaged in the prosecution of *my* suits.

185 x Q. Please give me the names of all persons who have signed papers similar to "Defendants' Exhibit No. 1, July 11th, 1879," assenting to the plan of the Bondholders' Committee; give me the names of all that you can now remember, and refer me to the proper officer of your Committee from whom I can ascertain the others?

272 A. The names are very numerous; I decline to give them, or connect the affairs of the Committee of Tennessee bondholders with my individual suits at issue.

(Defendants' counsel will move to suppress this deposition because of the refusal of the witness to answer the question.)

183 x Q. How long have you been actively connected with said Committee ? 273

A. I have not the dates, though I had severed my connection with the Committee when or before I filed these bills ; though I have since again acted with them.

187 x Q. Please state as near as you can remember, without being precisely accurate, how long you had been connected with the Committee before you severed your connection as stated above ?

A. From the date when I was appointed secretary at the first meeting of that Committee of Tennessee 274 bondholders until the filing of the bills.

188 x Q. In what year was the first meeting of the bondholders of which you were appointed Secretary ?

A. The year 1877, I think.

189 x Q. Was it not a part of your duties as an officer of said Committee to keep yourself well advised of all matters affecting the interest of said bondholders; and did you not do so from the time you became such Secretary ?

A. I certainly aimed to do so. 275

190 x Q. You state in your original answer number 6, and in cross answer number 185, that the holders of Tennessee bonds, and of those who have assented to the plan of the Committee, are very numerous ; do any of such parties reside in the State of Tennessee ?

A. I decline to give the names and whereabouts of those who have assented ; I am informed that some of the holders of Tennessee bonds reside in Tennessee.

191 x Q. Have not the Committee stated to Tennessee Bondholders that "the members of the Committee are 276 owners to a large amount of bonds that are not liens on the railroads which they do not propose to fund into the fifty and four per cent bonds offered ; they believe that the enforcement of the railroad liens will bring about a much better settlement than is now proposed ?"

A. They did, and that, too, for very good reasons.

277 192 x Q. Please state if the Committee of Tennessee bondholders did not upon July 3d, 1879, issue a circular, a copy of which is here produced and filed, marked "Defendant's Exhibit No. 2, July 11, 1879," and was not said circular published as an advertisement in the *New York Herald*, of July 9 or 10, 1879; a copy of said advertisement being here produced, and marked "Defendant's Exhibit number 3, July 11, 1879?"

A. Such are the facts.

193 x Q. Is it not a part of the policy of the Com-
278 mittee of Tennessee bondholders to prevent the people of Tennessee from voting in their pending election in favor of offering to the bondholders of the State a compromise of the indebtedness of the State in bonds for fifty cents on the dollar of the present bonds, and four per cent. interest on the new bonds?

(Complainant's counsel request defendants' counsel please to state whether this testimony is intended to relate to the issues on the pleadings
279 or to the pending motion.)

(Defendants' counsel states this question relates principally to the pending motion for a receiver and for precipitating the trial, said motion as the notice informs him is to be heard upon the pleadings and proceedings, but he expects to make such use of the testimony on the main issues as he may be advised.)

(Complainant's counsel requests defendants'
280 counsel to state what he proposes to show by this line of questions in regard to the State election.)

(Defendant's counsel is not willing to disclose at this point the plan of his cross examination of the complainant, but will develop it by a series of questions following this.)

A. I refer the counsel to that Committee; I have no

authority to speak for them; such may or may not be 281
the case.

194 x Q. Do you not think that you are apprised of the policy of the Committee on the question referred to in cross-question number 193, and while you may not be authorized to speak for them, cannot you tell what their policy is?

A. I am not apprised of their intentions; I do not believe that they have decided upon any policy in that direction.

195 x Q. Have not you or your Committee been in 282
correspondence with persons in Tennessee who are opposing the offering of that compromise?

A. Not that I am aware of—only so far as the Secretary may have answered any reasonable inquiries as to the committee's doings.

196 x Q. Have you not written, or do you not know that members of the Committee have written, letters to persons in Tennessee, the object of which were to defeat the pending compromise?

A. I do not know of any such instances, nor do I 283
believe that any such have ever occurred; the Committee has no alliance with or respect for the repudiating element in Tennessee.

197 x Q. Do you not know that the repudiating element in Tennessee are now urging upon the people as a reason why they should not vote in favor of offering a compromise to the bondholders of Tennessee, that the compromise will not be accepted by the bondholders even if offered by the people, and have you or your Committeemen not been writing letters to those repudia- 284
tionists to the effect that the bondholders would not accept the compromise, and have you not done so for the purpose of enabling those repudiationists to make their arguments effective?

(Objected to on the ground that the efforts of the railroad companies to induce the people of Tennessee to lift the mortgages from their prop

285 erty, and to compel the bondholders owning those mortgages to release them within a limited period, have no reference to the rights of complainant to a trial for the enforcement of his mortgage liens upon these railroads.

Irrelevant and immaterial to any controversy between bondholders enforcing their statutory lien, and the railroads subject to it.)

(DEFENDANTS' COUNSEL: In order to save time
286 and expedite a hearing, defendants' counsel here notifies complainant's counsel that he is willing for all objections to be briefly stated and the argument reserved for the Court, who alone has authority to pass upon them.)

(Complainant's counsel notifies defendants' counsel that interrogatories incorporating arguments in reference to the arrangements proposed between the State of Tennessee and its creditors, not participants in this litigation, compel him to
287 adjust his objections accordingly.)

(Defendants' counsel, without arguing the argumentativeness of his questions, respectfully requests complainant's counsel that he will allow his client either to decline to answer or to answer so that the examination may proceed, as defendant desires to have some time to get ready upon the motion that is threatened.)

288 A. Some of the Tennessee papers use such arguments but not at our instigation.

198 x Q. Is it not one of your objects in pressing an immediate hearing of an application for a receiver or of the trial of the cause before the election can be held, to make some capital out of some incident that may occur upon such application, that will aid in defeating the compromise now pending before the people of Tennessee?

(Objected to because it assumes a fact, the contrary of which is the case, namely, that the bondholders are seeking a hearing on account of the election, whereas, it is the railroad companies that have obtained orders, the effect of which is to delay a hearing beyond the election.) 289

A. I say most emphatically, that I am pursuing the same course in reference to these suits that I would have pursued had there been no State compromise pending in Tennessee. 290

199 x Q. Do you think that, but for said election, you would have required the Court and counsel to go from a cool pleasant climate into such a place as Nashville will be on the 26th of July, to argue a motion for a receiver over a railroad, which is ample security for debts which you claim, irrespective of the solvency of the companies that may now be in control thereof?

(Objected to because it assumes that there is any desire on the part of complainant to compel a hearing in Nashville when the complainant is willing to have a hearing elsewhere.) 291

A. I again say most emphatically that I am not influenced in the trial of the causes by the State Debt Compromise pending in Tennessee; I would not receive such compromise bonds should the compromise be carried.

200 x Q. My question referred to a motion for receiver and not to the trial of the causes. Please answer as to the motion for receiver? 292

(Objected to because it assumes incorrect grounds for the application for a receiver—— that the application is based upon the non-existence of security, whereas it is based upon the consumption of revenues in such manner as to prevent complainant from promptly realizing the benefits of a decree for his overdue interest.)

293 (Defendants' counsel again protests against the dilatory character of the objections interposed by complainant's counsel, as the petition filed will show the grounds of the application.)

A. I would have made the same motion for a receiver had there not been any State Debt Compromise pending.

201 x Q. Why did you not ask for a receiver of these roads when you first filed your bills or at the first term
294 of the Circuit Court at Nashville which met on the third Monday in April, 1879?

(Objected to because it assumes a knowledge of an expert on the part of complainant as to the proper time to make motions in course of litigated proceedings.)

A. My counsel is present and better qualified to answer that question than I.

295 (Defendants' counsel will move to suppress this deposition because in this instance and in many others that have previously occurred, the objections of complainant's counsel, whether so intended or not, have indicated to the complainant the answer he should make to the question asked him, and in other instances have had the effect to keep the complainant from giving any answer at all to questions, which, whether competent or not, did not tend to expose the witness
296 to any pains, penalties, forfeitures, criminal prosecution, nor to degradation or disgrace, whereby defendants are deprived of an opportunity to argue before the Court the competency of such testimony as the answers, if given, may have afforded.)

(Complainant's counsel replies to this argument: first, that only at a very late stage of this deposition did the defendants' counsel announce

that he was taking testimony for the purposes 297
of the motion for receivership and other motions. All complainant's objections previous to this declaration are to be treated in the light of the pleadings. Complainant has not required a separate deposition for the motions, being actuated by desire to facilitate the progress of the cause. But he does not waive the binding force upon the defendants of the testimony of the complainant, whom they have examined as their own witness. The same position is taken 298
in reference to new matter, which may be claimed to belong to cross-examination. Complainant is unable to except to the general charges in regard to the portions of this examination preceding the last question, until defendant indicates the objections in respect of which he last addressed the Court. Complainants' counsel has distinctly objected to answers to many of the questions, and has not done so in respect of the questions now propounded to the witness.) 299

(Defendant's counsel does not understand himself as having announced that he was taking testimony for the purposes of the motion for receivership. He reserves the right to show that there has been no valid service of any notice of any such motion, and to object upon all grounds of jurisdiction. And it is only because the notice that was served upon defendants' counsel stated the application would be heard 300
upon the pleadings and proceedings, of which he supposed it would be claimed that this deposition was a part, that he has asked the questions which he thinks will be material, if the Court should rule upon argument that service of notice upon defendants' counsel here in New York is good service upon a corporation whose chief office is in Tennessee, and if Justice Strong, before

301 whom the motion is cited, should be of the opinion that he has jurisdiction to entertain it. If anything appears in the previous part of this deposition which would seem to bear a broader construction, the defendants' counsel now and hereby distinctly notifies complainant and his counsel, both of whom are present, that the action of defendants' counsel is intended to be restricted to the elements specified in this memorandum.)

302 202 x Q. Is it not a fact that the counsel of these defendants met one of your counsel in the Maxwell House, at Nashville, Tennessee, on Sunday morning next after these bills had been filed and asked him if it was his intention to apply at that time for a receiver over either of these roads, and if he did not reply that he did not at that time expect to ask for receivers over any of the roads, unless it should be in the case of some of the insolvent roads, such as the Mobile & Ohio?

A. I do not know such to be a fact, though I do not
201 deny the statement; my counsel now informs me that such was the case.

203 x Q. I understand you to have previously declined to give me the names of any persons who have signed "Defendant's Exhibit No. 1, July 11, 1879;" please give me the names of all the persons you know to be holders of the Tennessee bonds, who have not signed said Exhibit; I embrace in this question all of such persons as you have heard said that they held bonds of Tennessee?

304 A. I again decline to give information as to questions bearing directly or indirectly on the affairs of the committee of Tennessee bondholders.

204 x Q. I expressly refrain from inquiring into the affairs of that committee, as I understood you before to regard it as a sacred and secret organization; but I did not suppose you would object to speaking of those who have not the honor of a membership in that close corporation; will you now answer as to those holders

of Tennessee bonds who are in no wise connected with 305
said committee ?

A. I must decline to answer in regard to them also.

205 x Q. Why do you decline ; do you suppose that any one who is the honest holder of a bond would object to your stating as he was such ?

A. For the very good reason that I have no right to make their affairs public without their consent ; understanding as I do that some *bona fide* holders of Tennessee bonds are actually unwilling to publicly ac- 306
knowledge their ownership of such.

206 x Q. And do you not further know that it would not suit *your* present purpose to disclose the name of one of these bondholders who is unwilling to let the fact be known ?

A. Such is more positively not the case ; on the contrary, as far as my own interest and purpose are concerned I would have no objection in stating the names of all that have or have not assented to the circular of the Committee of Tennessee bondholders. 307

207 x Q. I am not now inquiring about those who have assented to said circular ; and I further ask if it would not very seriously interfere with the purposes and projects of your Committee to divulge the name of a certain holder of Tennessee bonds, who has been induced not to sign the agreement, for the reason that it is believed by your committee that it would be better for him at present not to be connected with them ?

(Complainant's counsel requests defendants' 308
counsel to state to whom he refers).

(Defendants' counsel reserves his right to state this when he takes his proofs).

A. I cannot possibly conceive how the mention of any bondholder's name would in the least interfere with the purposes of the Committee or myself.

208 x Q. Has there ever been or is there now any dif-

309 ference in price in the New York stock market between the bonds of Tennessee loaned to railroads, and those issued to build the Capitol, purchase the "Hermitage" or for other ordinary State purposes; if so, please state the difference?

A. Owing to the manner in which the bonds are called at the Stock Exchange there is necessarily no differences; but upon the open market where Tennessee loan bonds are mostly bought and sold, there is a marked difference; I should say from two to five per
310 cent. in limited transactions.

209 x Q. How long has this difference existed even in the open market?

A. Well, I should say within two years.

210 x Q. Has there ever been, or is there now any difference in the New York stock market between the bonds of the State of Tennessee loaned to solvent and important trunk lines like the Louisville and Nashville Railroad, and those loaned to insolvent branch roads, like the McMinnville and Manchester and the
311 Winchester & Alabama?

A. I apply the same answers as to cross-questions 208 and 209.

211 x Q. What is the difference now on the New York Stock market between the bonds of the State of Tennessee that were loaned to any certain railroad before the late war and those that were loaned by the State to that railroad after the war, they being known on the Stock Board as "old" and "new" bonds?

A. At present I should say the difference was not
312 more than two or three per cent.

212 x Q. What was the greatest difference that obtained between these two classes of bonds upon the New York Stock Market between the first of the year 1869 and the last of the year 1871?

A. I could not say; I had little if any acquaintance with the stock market in those years.

213 x Q. Wil you please to refer to such reliable data

as are accessible to you here in New York, and give me such information? 313

(Defendant withdraws this question, it being stipulated between counsel that any authentic certificate as to the price of Tennessee State bonds at any relevant period may be admitted without formal deposition to be filed in these causes.)

214 x Q. What is the difference between the price which the bonds of Tennessee loaned to railroads bore in the New York Stock Market when these suits were commenced and the price which such bonds bear now? 314

A. I could not state accurately; but I should say that they are several per cent. lower—say three to five per cent. than they were when these suits were begun; very good evidence that any pretended bull movement has not been successful.

215 x Q. Is it not a fact, that before the railroads of Tennessee began to buy State bonds in the New York Market to pay off their debts to the State—say for instance in December, 1869, Tennessee bonds were quoted as low as 40½ cents, while in March, 1874, they sold as high as 90½? 315

A. I do not recollect, but I do not deny the statement.

216 x Q. Have you ever applied to any Governor of the State of Tennessee to appoint a receiver to take charge of and operate either of these railroads upon the ground that the interest upon the State bonds loaned to them was in default; have you ever applied to any Court for such receivers prior to the institution of these suits? 316

A. I have not.

217 x Q. Did any railroad receivers of Tennessee appointed under the Internal Improvement Law of that State ever pay to you or to any other bondholder to your knowledge any interest upon bonds which had

317 been loaned by the State to the railroads under the receiver's control?

A. Not to my knowledge.

218 x Q. Did you or any other bondholder, so far as you know, ever attempt to hold any of such receivers or their sureties responsible for funds collected by them in the operation of the railroads upon which you claimed to have liens?

A. Not that I am aware of.

219 x Q. Is it not a fact that receivers were allowed to
318 remain in control of many of the railroads of Tennessee for considerable periods of time, the property in their charge continually depreciating, with no attempt on the part of the bondholders to see to its preservation?

(Complainant's counsel objects to all questions in relation to the receiverships unless it is shown that these roads were in the hands of the Receivers.)

319 A. I do not know, though I do not deny the assertion.

220 x Q. Have you or those under whom you claim ever funded new bonds of the State of Tennessee, any of the unpaid coupons or bonds, which you claim to be a lien upon railroads?

A. I have no recollection of ever funding any Tennessee coupons; my father funded coupons of Tennessee bonds which he then owned, but I do not know whether I own these bonds now or not; my father gave me all
320 his Tennessee bonds before he died.

Adjourned by consent to July 12th, 1879, at 10 A. M.

July 12, 1879, 10 A. M. 321

Complainant's solicitor notifies defendants' solicitor that for the purpose of securing a hearing of the causes within a reasonable time, to wit: at or about the time when the period for taking testimony in these causes will have expired under the rules of the Supreme Court of the United States, namely, on or about the 26th of July, 1879, complainant will, subject to the exceptions hereinafter set forth, admit the matters of fact, 322
but not the conclusions of law nor the inferences and deductions and constructions set up in the answers of the defendants.

This offer is to be taken subject to all right of exception and objection on the part of the complainant to the relevancy, materiality or any other ground of legal objection to the matters of fact set up in the answers.

The matters hereby admitted are also to be sub- 323
ject to any weight of testimony which may be attributed to the following executive and legislative documents of the State of Tennessee:

Acts of the Tennessee Legislature in reference to the Louisville & Nashville Railroad Company and the other corporations.

The circular of the fiscal agent of the State of Tennessee issued in 1868 by Samuel Watson.

The message of Gov. Brownlow to the Legislature of Tennessee in 1868. 324

Extracts from the reports of the Comptrollers of the State of Tennessee, several of which reports are referred to in the answers.

The report of the joint select committee of 1857–8 to investigate the offices of the Comptroller and Secretary of State.

The inaugural message of Gov. Marks of Tennessee, referred to in the cross-examination.

325 It is also, of course, subject to any testimony already taken.

This stipulation is intended to relieve the defendants from the necessity of taking oral testimony to prove any matters extrinsic to the Statutes and public documents of Tennessee. But it is not intended to affect the proof taken of complainant's ownership of bonds nor of the other matters contained in his direct examination.

326 It is intended to confine further proof in these causes to authenticated copies of Statutes and public records.

Complainant further notifies defendants that authenticated copies of the General Internal Improvement Law and the other acts and documents referred to in his notice of resting have been filed with the Clerk of this Court.

Complainant further offers to stipulate that all
327 other statutes may be read from the printed volumes containing the imprint of the Secretary of State's certificate, and the executive and legislative documents from the printed volumes published in the usual official form.

The foregoing offer is intended to secure the hearing of these causes by a Justice of the Supreme Court of the United States, and to avoid the delays which would preclude such hearing during the vacation of that Court. If, for any
328 reason, such hearing should be prevented, this offer is subject to revocation by the complainant.

Complainant's counsel, in view of the fact that defendant's counsel proceeds with the examination of the witness, requests defendants' counsel to state in what respect the above offer is unsatisfactory, and complainant hereby offers to

make the said stipulation more specific in respect of any and all facts set up in the answer, it being complainant's object to admit the said matters of fact for the purposes of said hearing. 329

Defendant's counsel regards said memorandum as matters unknown to the practice of this Court, and proposes to do as complainant has done to prepare his case for trial with all due diligence, but in strict accord with the usual practice of the Court and the rules and orders heretofore made in these causes. 330

Complainant's counsel further offers to expunge from the record the witness's cross-examination, if claimed by defendants to interfere in any manner with the execution of the above stipulation, complainant being precluded from making the same offer in reference to the direct examination, on account of the denials in the answers of complainant's ownership of bonds. 331

Cross-examination resumed:

221 x Q. Are not the bonds issued by the Louisville and Nashville Railroad Company, and called by them "first mortgage bonds," amounting to several millions of dollars, above par in the New York market to-day?

A. Bonds called by the Louisville and Nashville Railroad Company "first mortgage bonds" are quoted above par.

222 x Q. Are not the bonds issued by the Nashville and Decatur Railroad Company, and called by them "first mortgage bonds," amounting to over two million of dollars rated at par or above? 332

A. I understand that such is the case.

222 x Q. When did you first become aware of the fact that certain bonds of the State of Tennessee had been issued to these particular railroads, and how did you get that information?

(Objected to as immaterial.)

333 A. Within three years, and through the State Comptroller's Reports.

224 x Q. When did you first claim or assert that you had a lien upon either of these roads?

A. Within three years.

225 x Q. When did you first notify either of these defendants that you claimed a lien upon their property and the amount that you claimed?

A. When I filed the bills.

226 x Q. When did you first hear that the Nashville
334 and Decatur Railroad Company had, as they claimed, paid off their debt to the State in bonds of the State; I, of course, understand you as denying that it had any validity as against your rights, my question being when you heard of the fact?

A. I should say within three years, not before that time having read the Statute or examined the question.

227 x Q. When did you first hear of the fact that the Tennessee railroads through brokers or agents here in
335 New York were trying to purchase bonds of the State of Tennessee, with a view of making such payments to the State?

A. It must have been much longer than three years since I heard so.

228 x Q. Could you fix the date somewhat more definitely upon reflection?

A. Within ten years.

229 x Q. When did you first hear that the State of Tennessee had filed a bill against the delinquent roads
33 of that State to have them sold for what the State claimed as debts due to the State?

A. I should say within three years.

230 x Q. Have you ever taken any steps by appeal, writ of error or bill of review to reverse the decrees of the Chancery Court at Nashville, declaring that the lien upon the railroads of Tennessee under the Internal Improvement Law belonged to the State and not to the bondholders?

A. That, of course, does not refer to anything in the 337
bills.

231 x Q. I ask by writ of error, bill of review or appeal?

A. I have not, not being aware of such facts until recently.

232 x Q. Of what State were you a resident or citizen in the years 1870, 1871 and 1872? Were you a resident or citizen of the State of Tennessee?

A. I was a citizen of New York, and not a citizen or resident of the State of Tennessee. 338

233 x Q. Is it not a fact that you or your co-committeemen of the Tennessee bondholders are attempting by publications and private advice to dissuade bondholders of the State of Tennessee from accepting the compromise that is now pending before the people of that State?

A. The committee have issued a circular advising their constituents not to accept, but have made no other special exertions to my knowledge.

234 x Q. Did you ever enter any protest against the 339
authority assumed by the State of Tennessee from time to time to cancel or destroy the bonds which the railroad companies now sued by you had paid into the sinking fund provided for by the Internal Improvement Laws of that State?

A. I have not; I was not conversant with Tennessee affairs at the date you name.

235 x Q. Did you or did any other bondholder of Tennessee, to your knowledge, ever enter any protest against the action of the State of Tennessee in releasing 340
the railoads of that State from their debts?

A. The right of Tennessee to do so was discussed and denied to my knowledge as far back as 1870; I think, when Messrs. Davis & Davies gave an opinion to the contrary.

236 x Q. Was said opinion of Davis & Davies brought to the attention of the authorities of Tennessee so far as you know or believe? If so, when?

341 A. I do not know; I was not then conversant with Tennessee affairs.

237 x Q. You were aware, then, as early as 1870 that the railroads of Tennessee claimed the right to pay their debts to the State, and that the lien belonged to the State and not to the bondholders?

A. No, sir; I have obtained that information since.

238 x Q. Did you not see Davis & Davies' opinion at or about the time it was being circulated in New York?

A. No, sir; not till within three years, I should
342 say.

239 x Q. Were you not a holder of Tennessee bonds in 1870, and interested in these liens?

A. I could not say that I was.

240 x Q. Did you ever enter any protest against the action of the State of Tennessee in selling out the delinquent railroads to pay the debts which the State claimed to be due to her and not to the bondholders?

A. No, sir; because I was not aware of the facts until quite recently.

343 241 x Q. Are you to be paid or allowed by any of the other persons who have agreed to come in to these suits any compensation or percentage over and above what you may be entitled to on your own bonds and coupons. If so, what?

A. Most assuredly not; these are my own individual suits.

Defendants' counsel closes his *cross-examination.*

344 *Re-direct examination* resumed by complainant's counsel.

242 x Q. What is your birthplace?

A. Brooklyn, New York.

243 x Q. How many years last past have you been a resident of the City of New York?

A. I should say more than ten years.

245 x Q. Did not one of the counsel for the defend- 345
ants notify one of your counsel that he would serve him with a notice of motion to extend the time of hearing of these causes until such period after the State election as would include the time that might be limited for the Tennessee bondholders to accept the State settlement?

A. I understood that some such notice of motion would be served.

246 x Q. You heard what transpired here yesterday in regard to it? 346

A. Yes, sir.

247 x Q. And is that substantially what you understood?

A. I so understand.

248 x Q. Were you present yesterday when one of the counsel for the complainant inquired of one of the counsel for the defendants whether and when he would serve him with said notice?

A. I was.

249 x Q. Did the counsel for the defendant reply that 347
he had concluded not to serve the notice?

A. I understood him so to say.

(Complainant's counsel here renews the offers to stipulate previously made.)

(Complainant's counsel further offers to stipulate that the following matters set up in the answers are true:

In 1852 the taxable property of Tennessee was 348
$177,420.305. The debt of the State then amounted to only $3,992,856.66, and the rate of State tax was only 11½ cents on the hundred dollars; the six per cent. bonds of the State were, as respondents are informed, at par, and she had

244 x Q. How long have you been a holder of Tennessee bonds?

A. I should say more than five years.

349 never defaulted upon any of her obligations. There was no difference in the money market between the price of the bonds loaned to railroads and those issued by the State to raise the capital of the Bank of Tennessee or to build her State house. Nor was there any difference in price between the bonds loaned to the most valuable railroads and those loaned to the most worthless. Respondents kept no record of the numbers, dates or series of the bonds issued to
350 them, and have no knowledge, information, remembrance or belief in regard thereto. The proceeds of these bonds were applied as directed by the laws under which they were loaned to railroads.

The Comptrollers' reports show that the Sinking Fund Commissioners credited each railroad company with the annual amounts paid in, but in their investment thereof selected any bonds of the State that were offered for sale. Thus,
351 from the Comptroller's report of 1859 (page 59), it seems that the Tennessee and Alabama Railroad Company paid to the Treasurer $6,400, which was invested in one bond endorsed by the State for the East Tennessee and Georgia Railroad Company, four State 5¼ per cent. bonds, and three State five per cent. bonds. Not one of the bonds purchased with the money paid in by that company had ever been issued to it. The idea of the State at that time was to pay the in-
352 terest on all the bonds that were paid into the railroad sinking fund, and that the accumulation would be so rapid as to certainly raise a fund that would pay the bonds by their maturity.

In the Comptroller's report of 1859, p. 60, he states that $82,840.95 paid in by the railroads therein named, invested with accrued interest, had purchased bonds amounting to $109,750, which paid an annual interest of $6,417.50, or 7⅞ per cent. on the investment.

The State had loaned her own bonds to some 353
of her Internal Improvement Companies; she had endorsed the bonds of some of the other companies, and has issued her own bonds to pay for her State house, and for other purposes. The result was that she had several different series of bonds issued under different laws and maturing at different times. Series A were five per cent. bonds issued under Act of 1838, maturing in thirty years. They were issued principally to pay for stock subscribed by the State 354
in various turnpikes and railroads, and aggregated $1,893,000. Series B were known as "White bonds, six per cent., issued under the Act of February 11th, 1852." Numbers 1 to 7,908 of this series mature in 1892, while numbers 7,909 to 11,806 do not mature until 1898. This series aggregated $11,806,000. Series C were also known as "White bonds, six per cent., issued under the Act of February 11th, 1852," and due in 1898. This series aggregated $1,878,- 355
000. Series B & C represented the State bonds loaned to the various railroads under the said Act of February 11, 1852, before the war. Under the Act of March 20th, 1860, to illustrate, the East Tennessee & Virginia Railroad Company paid in fifteen of their own endorsed bonds and two regular State bonds; the Memphis & Charleston Railroad Company paid in sixteen State bonds and $2,960 in cash. The Memphis & Ohio Railroad Company paid in six State 356
bonds; and so have the McMinnville & Manchester Railroad, and the Tennessee and Alabama Railroad.

Down to the late war, and through the various Acts of the Legislature and the Reports of the Comptroller and of the Sinking Fund Commissioners were all public, no bondholder was ever heard to protest against the authority as-

357 sumed by the State, or against the cancellation and destruction of the securities which the companies had paid into the Sinking Fund. No bondholders ever presented a State coupon to any railroad company for payment. No Tennessee Railroad Company had any banker or other correspondent in New York to pay the coupons on the State bonds loaned to it. No company ever retained in its possession the coupons that had been paid on the bonds loanən
358 to it. Few, if any, of the companies kept any memorandum of the numbers of the bonds issued to them.

As long as the Bank of Tennessee was in operation it was regarded as the Fiscal Agent of the State. All of its directors were appointed by the State, they were required to report to the State, and were constantly kept under its control. The State Treasurer kept none of the State funds in his own hands, but deposited all
359 the revenues of the State in the Bank of Tennessee,and could only check for the same on checks countersigned by the Comptroller. The Bank of Tennessee paid the interest on all the State bonds, without reference to the purpose for which they were issued. This is shown by the report of the Comptroller to the Session of 1851–2, when the general Internal Improvement Law was passed. (See his report. page 65.) The Merchants' Bank of New York and the Bank of
360 North America of Philadelphia, were the correspondents through whom the Bank of Tennessee paid the interest on the State debt. These correspondents would return the coupons to the Bank of Tennessee, by whom they were returned to the State. There was one account on the books of the Bank of Tennessee headed "Treasurer of Tennessee," which was credited by the revenues of the State deposited by the Treasurer, and by

the dividends derived from the State's stock in 361
the bank, and the various Internal Improvement Companies mentioned above, and was debited by the interest on the entire State debt paid by the Bank of Tennessee and by such other sums as were drawn by the Treasurer under appropriations made by law. There was also an account on the books of the Bank of Tennessee, headed "Interest paid on State Bonds," the object of which was to show the exact amount paid on that account, but it shows nothing as to 462
whom, or for what purpose, the bonds were issued upon which such interest was paid. There was also an account headed "Railroad Companies, for interest," showing the amounts and dates of all payments into the bank by the different companies, but it does not show that the payments were to be appropriated to the interest upon any particular bonds of the State; nor did the bank, in fact, know what bonds had been issued to any named railroad. The funds paid in 363
by all the railroads were thrown together as a whole and transferred either to the Treasurer's general account or the account headed "Interest on State Bonds," which was but a sub-account of the Treasurer's and under his control. The moneys paid in by the railroads were sent with other funds to New York and Philadelphia, where they were paid out by the correspondents aforesaid upon coupons of the State, making no distinction between the different bonds of the State. 364
These correspondents kept no accounts with the railroad companies and had no idea as to whom the bonds were issued, the coupons of which they were paying.

In the Treasurer's books and account was headed "Bank of Tennessee," the reverse of the account kept under his name at the bank. There is an account headed "Interest on Capitol

365 Bonds," in which is shown the interest paid on the bonds issued to pay for the State House. There is also an account headed "Interest on Internal Improvement Bonds." It shows the gross amount paid out on such bonds, but it does not show by whom the money was furnished, nor does it show the number or character of the bonds on which the interest was paid. There are no separate accounts with the different railroads to be found on the Treasurer's books. With the ex-

366 ception of the distinction between Capitol and Internal Improvement bonds, the Treasurer' made no difference between the various bonds of the State, but treated as all equally the obligations of the State.

The interest on the bonds loaned to respondents was not paid after July 1, 1861. And though the United States Circuit Court was open in Nashville, after its capture by the United States Army in February, 1872, no bondholders ever claimed

367 the right to a receiver for non-payment of interest.

The copies of the resolution and report attached as Exhibits A and B to the answer are admitted to be correct copies. They were published in the acts and journals of that session. And no one ever controverted the right of the State to make the settlement until this bill was filed.

368 The Louisville & Nashville Railroad Company on April 8th, 1868, executed a mortgage or trust deep, duly registered, upon its main stem and branches, to James Punnett and Julius B. Alexander, citizens of the State of New York, to secure an issue of eight millions of dollars bonds, of which $7,070,000, are now outstanding in the hands of holders for value. The said Punnett has since died, and John R. Smith, of Louisville, Kentucky, has been substituted as trustee. On

November 1st, 1873, said company executed another mortgage or trust deed, duly registered, conveying the same property and also the Memphis & Ohio and the Memphis, Clarksville & Louisville Railroads to Henry F. Vail, a citizen of the State of New York, and John B. Smith, of Louisville, of Kentucky, to secure an issue of four million dollars of bonds, of which two million are now outstanding in the hands of holders for value. In March, 1865, the bonds of the State of Tennessee were of the market value of fifty cents, but in December, 1865, they were at 92 cents in the dollar, as stated by the *Financial Review* of New York. The Nashville & Decatur Railroad Company created by the consolidation of the Tennessee & Alabama Railroad Company and the Central Southern Railroad Company in March, 1871, paid to the State of Tennessee $2,368,176, in bonds of the State. Said company had raised the money by the bonds paid in by them, by mortgaging the road for $2,100,000, in 1870, and selling the company's bonds in the New York market. None of the State bondholders attempted by any legal proceeding to assert any rights in opposition to the course which that company was pursuing. And respondents leased said Nashville and Decatur Railroad in May, 1871, agreeing to pay $2,450,000 of the debts of said company, and an annual six per cent. dividend upon its capital stock of $1.512,184.11, and in addition to all this, respondents have spent $ over and above their receipts in the repair and operation of said road.

On May 25th, 1871, the Memphis & Ohio Railroad Company paid the State of Tennessee $2,468,376.50 in bonds and coupons of the State. On the 1st of June, 1871, said Memphis & Ohio Railroad Company mortgaged its road for

373 $3,500,000 of bonds which had passed into the hands of holders. No State bondholder having made any complaint, the Louisville & Nashville Railroad Company consolidated with said Memphis & Ohio Railroad Company, endorsed said $3,500,000 of bonds, and have since expended $ over and above their receipts in the repair and operation of said road.

In January, 1871, the State of Tennessee filed its bills in the Chancery Court against the Mem-
374 phis, Clarksville & Louisville Railroad Company, to whom said bonds had been loaned. The State bondholders have never sought to review or to reverse said decree. On August 1st, 1872, respondents placed a mortgage on said road for $2,475,000 of bonds which respondents endorsed, and which have passed into the hands of holders for value. Respondents have also expended $ over and above their receipts in the repair and construction of said road. With
375 the exception of some interest paid in 1867-8, and some paid in 1874-75, the State of Tennessee has paid no interest since the commencement of the late war, and the remainder of the interest has all been funded into new bonds of the State, except that which matured since January 1st, 1876, and it has neither been funded nor paid.

In addition to the above stipulation, which covers the Louisville & Nashville case, complain-
376 ants offer to stipulate for the correctness of the following facts stated in the answers to the bills filed on account of bonds issued to the Tennessee & Alabama Railroad Company and the Central Southern Railroad Company.

The Nashville & Decatur Railroad Company and the original companies forming the consolidation owed the State $2,368,176. They met their interest in January, 1869, but fell behind $15,955.26 on their interest for July, 1869.

This authorized the State to appoint a receiver; and experience had taught that in every instance these political receivers had run the roads down, without ever reducing the indebtedness. 377

In October, 1869, the debt of Tennessee was $37,590,027.08, of which about $30,000,000 were for bonds loaned to railroad companies, with funded interest thereon. The State's bonds ranged in New York in 1869, from 70 cents in January to 40½ cents on the dollar in December, there being no distinction between bonds loaned to railroads and any other bonds. 378 There is a proviso in the Act of January 20th, 1870 (Acts of 1869-70, page 61), as printed, that it shall not be so construed as to allow the payment and satisfaction of debts created by bonds issued by the State, and upon which the State is secondarily liable. And it has been insisted that the State was only secondarily liable upon her bonds issued to the railroad companies.

By reference to the House Journal (1869-70, page 326), it will be seen that reference is made in this connection to the word "endorsed." 379

On July 1, 1870, the Nashville & Decatur Railroad Company executed a mortgage or trust deed upon their railroad property, rights and franchises, conveying the same to Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, all citizens of the State of New York, to secure first mortgage bonds to the amount of $2,100,000, issued and negotiated to raise the money to buy the State bonds to pay the debt due from said company. 380 Said mortgage was duly executed and registered. The bonds are now outstanding in the hands of holders for value.

The State Comptroller in his report in 1869, page 50, suggested to the Legislature the propriety of selling a sufficient number of the railroads for bonds of the State, to lessen the State's

381 liabilities eight or ten millions of dollars, he believing with such reduction the State's liabilities could be regularly and certainly met. His report in 1867 (page 67) shows that the railroads then owed $800,000 for interest due July 1st, 1867, which the State had paid for them on the bonds loaned them. The comptroller in his report for 1867 states that the records of his office show that from the railroads then in the hands of receivers scarcely a dollar had been received
382 during the past fiscal year (page 13). If the State had forced a sale of all the delinquent railroads so large an amount of such property thrown upon the market, in the depressed financial condition of the country, would have sacrificed alike the interest of the companies and the State, but by allowing the companies to pay their debts in any of the bonds of the State, and giving them a reasonable time in which to get the bonds, they were enabled to procure them at
383 reasonable rates, and by reducing the aggregate debt of the State they increased the ability of the State to pay, and by the reduction of her debt, through the sale of the railroads, the bonds of the State which were quoted as low as 40½ in December, 1869, were quoted as high as 91¼ cents on the dollar in March, 1874, at the New York Stock Exchange.

An elaborate opinion was written by Colonel Pryor which was concurred in by the Hon. E. H.
384 East of Nashville, who was then and is now one of the most eminent lawyers of Tennessee. The object of asking the opinion was not to satisfy said company, but to place the question fairly before the money markets of the world, where said company was trying to raise the means to buy the bonds to pay off their debt to the State. Respondents knew nothing of any opinion of New York counsel to the same effect that was

published at or about that time. It is true that 385
the transaction in all its entirety was fully understood by said company, and they supposed it was also understood by the purchasers of the new bonds, as the legislation under which they were issued was referred to in the mortgage, and the opinion of Colonel Pryor was published to give information on the subject. Said company acted upon the advice of counsel.

The foregoing offer is for the purpose of ob- 386
taining the hearing as stated in the previous offer, and is subject to revocation if the said hearing is not obtained.

The foregoing stipulation is believed by complainant to cover all the matters of fact which are set up in the answers. The admissions of the answers, except the references to the Statutes of Tennessee stand without reference to this stipulation. 387

Complainant, as a part of this stipulation, and in corroboration of the resting of the case already filed and notified, waives all such portions of the bills in these causes as have not been proved, and the replications heretofore filed are to be taken subject to this offer.

Complainant further notifies defendants that upon the records already existing in these causes and upon this deposition, including this offer, 388
he will be ready to proceed with the trial of these causes on the 26th of July current. Complainant also renews the offer for the proof and reading of the Statutes and public documents of Tennessee as specified in the previous offer.

Complainant is also willing that defendants may expunge the cross-examination of complain-

389 ant if they deem themselves in any way obliged to rebut the same.

To all of which defendants' counsel replies as he has heretofore replied.

CALVIN AMORY STEVENS.

Subscribed and sworn to before me }
this 12th day of July, A. D. 1879. }

WILLIAM H. DELANCEY, [L. S.]
Notary Public,
390 Westchester County.

Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873, of the State of New York.

391

392

Defendant's Exhibit No. 1. 393

July 11th.—W. H. D. L., Notary Public.

To the Committee of Tennessee Bondholders:

I hereby assent to the Plan and Conditions of the Committee's Circular of May 17th, 1879. 394

LIST OF BONDS.

Color.	Letter.	Numbers.

395

Defendant's Exhibit No. 2.

July 11, 1879.—W. H. D'L., Notary Public.

Office of Committee of Tennessee Bondholders, 396

No. 31 Nassau Street,

P. O. Box 936. New York, July 3d, 1879.

To the Holders of Tennessee Bonds:

The Committee beg leave to inform you that the suits for the enforcement of the liens of Tennessee Bonds, on the railroads to which they were issued, will be heard

397 by the Court in the course of the next few weeks, and that Mr. Justice Strong, of the Supreme Court of the United States, will preside at the trial of the causes. Upon representation that some of the Bondholders, who desire to avail themselves of the Committee's action for the enforcement of the railroad liens, were absent or for other causes were prevented from assenting thereto within the time limited in the previous circular, the Committee feel it incumbent on them to extend the time of uniting the suits upon the original terms, to
398 wit: One Coupon and Five Dollars in cash per lien bond, until July 20th, current. But after that date the committee will not receive assessments.

Thereafter the Committee will consider themselves absolved from all responsibility toward non-assenting holders of lien bonds, and will not protect their interests in the course of the legal proceedings or in any other arrangements growing out of them.

EUGENE KELLY,
Chairman.

399 THOMAS G. ROBINSON,
Secretary.

Defendant's Exhibit No. 3.

July 11, 1879.—W. H. D. L., Notary Public.

FINANCIAL.

400 Office of COMMITTEE OF TENNESSEE BONDHOLDERS,
No. 31 Nassau Street,
P. O. Box 936. NEW YORK, July 3d, 1879.

To the Holders of Tennessee Bonds:

The Committee beg leave to inform you that the suits or the enforcement of the liens of Tennessee Bonds,

on the Railroads to which they were issued, will be 401
heard by the Court in the course of the next few weeks, and that Mr. Justice Strong, of the Supreme Court of the United States, will preside at the trial of the causes. Upon representation that some of the bondholders, who desire to avail themselves of the Committee's action for the enforcement of the railroad liens, were absent or for other causes were prevented from assenting thereto within the time limited in the previous Circular, the Committee feel it incumbent on them to extend the time of uniting in the suits, upon the original terms, to wit: 402
One Coupon and Five Dollars in cash per lien bond, until July 20th, current. But after that date the Committee will not receive assessments.

Thereafter the Committee will consider themselves absolved from all responsibility toward non-assenting holders of lien bonds, and will not protect their interests in the course of the legal proceedings or in any other arrangements growing out of them.

EUGENE KELLY,

Chairman. 403

THOMAS G. ROBINSON,

Secretary.

404

405 **Complainant's Exhibit No. 4.**

July 10, 1879.—W. H. D. L., Notary Public.

UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT,

MIDDLE DISTRICT OF TENNESSEE.

406 CALVIN AMORY STEVENS, on behalf of the holders of Tennessee bonds, issued to the LOUISVILLE & NASHVILLE RAILROAD COMPANY,

versus

407 THE LOUISVILLE, NASHVILLE & GREAT SOUTHERN RAILROAD COMPANY *et al.*

In Equity.

THE SAME, on behalf of the holders of Tennessee bonds, issued to the CENTRAL SOUTHERN RAILROAD COMPANY,

versus

408 THE NASHVILLE & DECATUR RAILROAD COMPANY *et al.*

In Equity.

409

THE SAME, on behalf of the holders of Tennessee bonds issued to the TENNESSEE & ALABAMA RAILROAD COMPANY,

versus

THE NASHVILLE & DECATUR RAILROAD COMPANY *et al.*

} In Equity.

410

SIR:—Please take notice that the complainants in the above-entitled causes rest their cases upon the proof of the Acts of the Tennessee Legislature, passed 11th of February, 1852, entitled an Act to establish a system of Internal improvement, on 21st February, 1852, entitled an Act to authorize the renewal of certain bonds of the State of Tennessee, and on February 8th, 1854, entitled an Act to amend an Act, passed 11th February, 1852, entitled "An Act to 411
establish a system of Internal Improvement in this State." Also the statutory receipts of the three several railroad corporations above named, to which the Tennessee Internal Improvement bonds were issued and the evidence of ownership of these bonds by the complainants.

This notice is given for the purpose of expediting the hearing of these causes, and without conceding in any manner the validity or propriety of the order made in reference to an extension of time for the tak- 412
ing of testimony herein, as to which all complainants' rights are reserved.

Dated June 28th, 1879.

E. L. ANDREWS,
GEORGE HOADLY,
Solicitors for Complainant.

413 [Endorsement.]

Produced before me by complainant's counsel on examination of Calvin A. Stevens, July 10th, 1879, to be annexed to the deposition of said Stevens.

W. H. DeLANCEY
Notary Public.

414

CERTIFICATE.

UNITED STATES OF AMERICA.
SOUTHERN DISTRICT OF NEW YORK. } ss.:
State and County of New York.

I, WILLIAM H. DeLANCEY, a Notary Public in and for the State and County aforesaid, and duly commissioned and qualified under the laws of the United
415 States to take depositions for use in the Circuit Courts of the United States, do hereby certify that the reason for taking the foregoing deposition is and the fact is that the testimony of the said witness is material and necessary for the complainant, in the several causes in the caption of said deposition named, and that the said witness lives and did live at the time of taking said deposition in the City, County and State of New York, the same being at a greater distance than one hundred miles from the City of Nashville, where the Court, at
416 which it is expected the said causes will be tried, was appointed to be held, to wit, more than five hundred miles therefrom.

I further certify, that a notification of the time and place of taking said deposition was served on Edward Baxter, Esq., the solicitor of the adverse party, to be present at the taking of said deposition, and to put interrogatories if he might think fit.

I further certify, that on the 5th, 8th, 9th, 10th, 11th

and 12th days of July, A.D. 1879, I was attended at 417
my office, No. 52 Broadway, in the City, County and State of New York, in the Southern District of New York aforesaid, by EDWARD L. ANDREWS, Esq., Solicitor and of Counsel for the Complainant, EDWARD BAXTER, Esq., Solicitor and of Counsel for the Defendants, and by CALVIN AMORY STEVENS, the witness, who was of sound mind and lawful age, and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing 418
in the presence of the witness and from his statements, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purposes of annexing the several exhibits, and of sealing up and directing the same with this certificate of the reasons aforesaid for taking the said deposition, with my own hand, to the Court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and 419
caption named, or in any way interested in the event of the said causes named in said caption.

In witness whereof, I have hereunto set my hand and seal, this day of July, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and fourth.

WILLIAM H. DELANCEY, 420

[L.S.] Notary Public,
Westchester County,
Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

Deposition of Calvin Amory Stevens. 1

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston R. R. Co., 2

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

Testimony and proofs for final hearing on the part of Complainants in the above-entitled suit taken under 3 and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein.

NEW YORK, April 12, 1880.

Present.—Mr. E. L. ANDREWS, 4
For Compl'ts.
Mr. C. H. TWEED,
For Respd'ts.

5 CALVIN AMORY STEVENS, a witness produced on the part of the complainants, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth, and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct Examination by Mr. ANDREWS:

6 1 Q. Have you read that portion of James D. Porter's deposition taken at Paris, Tenn., March 9, 1880, in which he says:

"After the legislature had spent some days in wrangling, they were about to adjourn without doing anything as to the State debt, and I felt that I had done my duty and would let them go, but just at this time I received the telegram, Exhibit No. 2 to Calvin Amory Stevens' deposition, and upon the receipt of this telegram, I at once con-
7 vened the legislature and sent them a second message; that telegram alone induced me to convene the legislature and but for it I would not have convened them in the second extra session?"

A. I have.

2 Q. Will you please state the origin of that telegram?

A. In 1877 I first made the acquaintance of C. H. Bosher, a partner of R. T. Wilson; our acquaintance was but very slight, but knowing that he had
8 been an old acquaintance of my father, I relied upon him; on December 10, 1877, this note from C. H. Bosher which I made a part of my deposition, and offer in evidence (marked complainant's Exhibit No. 1, W. H. D. L., Spl. Exr.) was left at my office but not received by me on that day; on the evening of the same day I was surprised to receive at my house this telegram from C. H. Bosher, which I also

make a part of my deposition and offer in evidence, 9
(marked complainant's Exhibit No. 2, W. H. D. L., Spl. Exr.) on the following day Dec. 11, 1877, in response to his request I called on C. H. Bosher at the office of R. T. Wilson & Co.; C. H. Bosher immediately introduced me to R. T. Wilson, my first acquaintance with him; I was not posted about Tennessee affairs and Mr. Wilson undertook to inform me; he gave me as the latest advices from Nashville that it was impossible for the 60 and 6% bill to pass the legislature then in session there; 10
R. T. Wilson recommended that the bondholders offer to accept 50c. and 6% and have it definitely settled rather than that the Legislature should adjourn without any settlement. He gave me to understand that he like myself was a Tennessee bondholder, and that he was working in the interest of such. I did not then know that Messrs. Wilson & Bosher were interested in inducing the bondholders to give up lien bonds for those which would not carry liens. Indeed I had not then even read the 11
Tennessee statutes under which the bonds were issued and knew nothing of the so-called substitutions.

R. T. Wilson asked of me permission to write and send a telegram in my name. I allowed him to do so. R. T. Wilson himself wrote said telegram. After hastily reading what he had written, I was on the point of signing my own individual name when R. T. Wilson or C. H. Bosher suggested that the name of the estate would carry more weight, 12
and it was the same lot of bonds that my father had owned when living, I would be fully justified in signing the estate of Calvin Stevens, C. Amory Stevens, Trustee; after procuring my signature to said telegram, of which he was the author, he took charge of it, and as Bosher stated, on that day dispatched it to Tennessee.

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and it was the same lot of bonds that my father had owned when living, I would be fully justified in signing the estate of Calvin Stevens, C. Amory Stevens, Trustee; after procuring my signature to said telegram, of which he was the author, he took charge of it, and as Bosher stated, on that day dispatched it to Tennessee.

13 3 Q. Were you then acquainted with J. B. Manning, A. Iselin & Co., and Inman Swann & Co., over whose names telegrams were sent from New York about the same time and which Governor Porter published in connection with R. T. Wilson's other telegrams as the basis of his call for the extra session?

A. I was not then acquainted with them, but I am now.

4 Q. Do you understand that those telegrams also
14 were prompted and sent by the railroad interest?

(Objected to as incompetent, immaterial, and irrelevant.

A. I certainly do; J. B. Manning is, was not a permanent investor in Tennessee bonds, but a broker who buys to-day and sells to-morrow; his telegram was solicited by the railroad interest and sent to oblige it; while Messrs. A. Iselin & Co., and Inman Swann & Co., like R. T. Wilson & Co., were
15 direct representatives of the railroad interest, being large owners of Tennessee railroad stock and so-called sustitution bonds.

5 Q. In a second deposition of James D. Porter, taken at Paris, Tenn., March 25, 1880, he says that you signed the petition of Feb. 15, 1877, addressed to the Governor of Tennessee; were you one of the petitioners who joined in that petition?

A. I was not.

6 Q. Was your father a holder of Tennessee bonds
16 at that time, and one of the petitioners who joined in that petition to Governor Porter?

A. He was; the petition was presented for his signature, and he being too ill at the time to sign personally, I signed it for him, as appears on its face, namely:

CALVIN STEVENS,
By C. AMORY STEVENS,
Atty.

7 Q. Will you produce a copy of the petition of 17
the Tennessee Bondholders filed in the Supreme Court of the U. S. ?

A. There is a copy which I offer in evidence. Copy petition marked Complainant's Exhibit No. 3, W. H. D. L., Spl. Exr.

8 Q. Is this a copy of a bill brought by you in the U. S. Circuit Court for the Eastern District of Tennessee ?

A. It is, and I offer it in evidence ; marked Complainant's Exhibit No. 4, W. H. D. L., Spl. Exr. 18

Respondent's counsel objects to the foregoing questions 7 and 8 as immaterial, incompetent and irrelevant and to the introduction of said exhibits in evidence.

Cross-examination by Mr. TWEED.

9 x Q. As I understand your testimony to-day, on the 11th of December, 1877, when you signed the telegram to Gov. Porter that has been referred to, you 19
did not know of the claims that Tennessee bondholders had a lien upon the roads to which they were issued which you have asserted in these suits ?

A. I did not ; my introduction to such business affairs did not begin until after my father's death, March 15, '77, when I took charge of the estate.

10 x Q. When and from what source did you first learn of this claim ?

A. After the Wilson telegram, Dec. 11, '77, when 20
I read the Tennessee Statutes, Davies' and Davis opinion and Humes & Porton's brief.

11 x Q. Did you do that before hearing read Mr. Wilson's letter to Mr. Terry, dated June 11, 1878 ?

A. It must have been about that time.

12 x Q. That was in or about June, 1878 ?

21 A. Yes.

13 x Q. On the 11th December, '77, were you the owner of any Tennessee bonds except those which you had received from your father's estate?

A. I was; of less than $20,000.

14 x Q. Whene had you procured those that you had at that time?

A. I should say I bought the first several years before. I could not fix the date without referring to my books.

22 15 x Q. Will you please refer to your books so that you can state the number that you bought, the time that you purchased them, and the amount that you paid for them, in respect of each of the Tennessee bonds which you owned on the 11th December, 1877, and which you did not receive from your father?

A. I have already given my books full and careful investigation in answer to that and similar questions asked me at previous examinations aiming to

23 throw all the light that I could on the question; I can do nothing better than I have done.

16 x Q. What books did you keep in and prior to 1877?

A. I kept no regular set of books.

17 x Q. What books did you keep containing a record of your purchases of bonds?

A. I would call it a private memorandum book, giving a brief statement of what real estate and bonds that I owned.

24 18 x Q. Where is that book now?

A. It is likely at 51 West Fifty-second street, which is my residence in New York.

19 x Q. If on the 11th December, 1877, you had any of the bonds which have been put in evidence by you in the cases in and for which you are now being examined, viz: the cases against the E. T., Va. & Ga. R. R. Co., the Cin., Cum. Gap & Charles-

ton R. R. Co., the Knoxville & Ky. R. R. Co. and 25
the Memphis & Charleston R. R. Co; would they not appear in that book?

A. They might, but not with sufficient accuracy to identify them; I think the chances are nine out of ten they would.

20 x Q. On the 11th December, 1877, outside of the bonds which you received from your father, did you have as many as $10,000 of Tennessee State bonds?

A. I should say somewheres thereabout, certainly 26
inside of $20,000, somewhere near $10,000.

21 x Q. Will you swear that you had as many as $5,000 outside the bonds you received from your father?

A. I do.

22 x Q. Do you know whether any of the bonds outside those you received from your father, were loaned by the State of Tennessee to any of the railroads proceeded against in any of your pending suits, and if so, which bonds and to which railroad? 27

A. My impression is that there were a few, but none of them have been proven in any of the cases which the present counsel for defendants represents.

23 x Q. Did you have the bonds of the State of Tennessee, which you received from your father, on the 11th December, 1877?

A. I could not answer whether I then had all of them or only a part.

24 x Q. Did you sell a portion at or about that 28
time?

A. I do not recollect whether I sold any during the year 1877, but my impression is I did during the year 1878.

25 x Q. When and how did you receive the bonds of the State of Tennessee, which you received from your father?

29 A. I should say within six months before his death, through a written instrument executed by him.

26 x Q. Where is that written instrument?

A. In this city.

27 x Q. Under your control?

A. It is.

28 x Q. Does it specify in or about the instrument the numbers of the bonds which were transferred to you by your father?

30 A. It does not—merely the aggregate amount.

29 x Q. Is there any record, and if so, where, of the numbers of the bonds which were transferred by your father to you?

A. H. T. Morgan & Co. had such record, and the bonds themselves were the best evidence of their numbers; H. T. Morgan & Co.'s record speaks for only such bonds as my father bought through their house, which I think include most of his purchases.

31 30 x Q. After you received the bonds did you make or have a list of their numbers?

A. I did.

31 x Q. Have you any list of them now?

A. I may have kept it though I am not certain; after it had enabled me to prove what bonds issued to railroads were among my present holdings my impression is that it went with other uncared for papers.

32 x Q. Do I understand you that you compared

32 this list with the lists of the numbers of bonds loaned by the State to different railroads?

A. You do.

33 x Q. Were any of those bonds bonds which you have proved in evidence in any of the cases which I have mentioned above as the cases in and for which this deposition is being taken?

A. They were not.

34 x Q. How many of them were bonds which were 33
loaned to railroads?

A. I could not answer how many, but very largely in the minority.

35 x Q. Were any of them bonds loaned to railroads?

A. They were.

36 x Q. As many as ten?

A. There might have been ten and there might not; most of them were "green" bonds.

37 x Q. What was the aggregate amount of the 34
Tennessee bonds received by you from your father?

A. I think it was $110,000.

38 x Q. When did you commence the earliest of the suits brought by you upon the ground that Tennessee bondholders were entitled to a lien upon the railroads to which the bonds were loaned?

A. I cannot give the exact date from memory; they were all in January, 1879, as I learn from my counsel.

39 x Q. How long before the beginning of that 35
suit did you instruct counsel to commence suits against the railroad companies upon that ground?

A. I could not answer that question definitely either; I should say within six months before the suits were commenced.

40 x Q. Between about June, 1878, when you learned of this claim to a lien and January, 1879, you were engaged in procuring Tennessee State bonds of the numbers which were issued to solvent railroads, were you not? 36

A. I bought such bonds issued to solvent and insolvent railroads.

41 x Q. Did you select out bonds issued to railroads, or did you undertake to make a distinction between bonds issued to solvent and bonds issued to insolvent railroads.

A. I bought both ways, solvent and insolvent together, and solvent and insolvent separately.

37 42 x Q. Did you undertake to retain those issued to solvent railroads and dispose of the others?

A. I bought both, and have retained both; I aimed principally to avoid bonds issued to turnpikes and bonds issued to railroads which did not carry liens; I also avoided graveyard bonds and bonds issued for State purposes.

43 x Q. The principle of selection was substantially then to retain bonds issued to railroads?

A. That was it, preferring bonds issued to main
38 trunk lines rather than feeders.

44 x Q. Were you present at, or did you know of the argument in the Supreme Court of the U. S. upon this or a similar question in or about June, 1878?

A. I was not present, but I knew of it and was very much surprised when I learned that our opponents had settled with the complainant in that suit thus preventing a decision in our case, the more so, because the defendants in that suit representing the
39 railroad interest had specially invited the Tennessee bondholders to enter that case, and have it adjudicated upon and definitely settled at that time.

(Respondent's counsel objects to all of the above answer after the words "I knew of it" as irresponsive.)

45 x Q. Did you have any personal knowledge of the invitation you have spoken of in the last an-
40 swer?

A. I was present when the invitation was extended by R. T. Wilson to the Tennessee bondholders, and certainly considered myself one of those invited.

46 x Q. By this invitation do you refer to the letter of R. T. Wilson to Terry dated June 11, 1878?

A. I refer to that letter which was publicly read

at a meeting held in R. T. Wilson's office at which 41
numerous Tennessee bondholders were present.

47 x Q. You know of course in June, 1878, that the railroad companies resisted this claim to a lien?

A. I did.

48 x Q. While you were purchasing your bonds from June, '78 to January '79, you knew that they would resist the claims that you intended to make upon them?

A. I naturally supposed that they would resist them until they were forced to pay them. 42

49 x Q. Forced how?

A. By the law of the land.

50 x Q. Did you before commencing these suits ever present any coupons appertaining to any of these bonds to any railroad company and demand payment thereof?

A. I did not.

51 x Q. Please give me the maximum and minimum of the prices which you paid for bonds between June, '78 and January, '79? 43

A. I paid the Stock Exchange prices of those dates when they were bought promiscuously, but most of my bonds were bought off the Stock Exchange, buying only railroad lien bonds and paying several per cent. above the Stock Exchange prices for that privilege.

(Witness is requested to produce at the adjourned meeting to-morrow the memorandum book which has been referred to on this 44
examination, and a list of his father's bonds, if it is still in existence.)

Adjourned to 13th, at 4 P. M.

April 13th, adjourned to 14th, 2 P. M.

45 NEW YORK, April 14, 1880.

Present—Counsel as before.

Cross-examination resumed:

52 x Q. Did you pay above the Stock Exchange prices for the the privilege of selecting bonds at any time prior to about June, 1878, when you learned of this claim to a lien?

A. I cannot say for a certainty, but I think not.

53 x Q. What percentage above the Stock Ex-
46 change prices did you pay between June, 1878, and the commencement of these suits, January, 1879, for the privilege of selecting bonds?

A. For the privilege of exchanging non-lien for lien bonds, I think that three per cent is the highest difference that I paid and from that as low as $\frac{1}{8}$ per cent. But for selected R. R. lien bonds which I bought directly off the Stock Exchange, I think that I paid as high as 5 per cent. above the current Stock Exchange quotation for "old" bonds, and
47 as high as 10 or 12 per cent above the Stock Exchange quotations for "new" bonds.

54 x Q. Do you mean to be understood as saying that you bought "new bonds" and paid for them 10 to 12 per cent. above the market price of such bonds?

A. I certainly do not mean any such thing, but I do mean that I paid for "old" R. R. lien bonds fully as much as 10 or 12 per cent. above the Stock Exchange quotation for "new" bonds.

48 55 x Q. At that time what was the difference in the market price at the Stock Exchange between "old" bonds generally and without regard to lien and "new" bonds generally and without regard to lien?

A. I do not recollect accurately but according to the Stock Exchange quotation between January and February, 1879, which defendants have put in evi-

dence, the extreme difference between the Stock Ex- 49
change sales of Tennessee "news" and "olds" was 17 per cent.

56 x Q. That difference between Tennessee "olds" and Tennessee "news" is the difference between the lowest price at which Tennessee "news" were sold during the month of February, 1879, and the highest price at which Tennessee "olds" were sold during that month, is it not?

A. It is; the difference for the month of January was not quite so great. 50

57 x Q. You do not wish to be understood as testifying that there was ever a time when the difference between these quotations of "old" and "new" bonds was as great as 17 per cent. on any particular day, do you?

A. I cannot answer that question, the Stock Exchange quotations will show.

58 x Q. When you made purchases of bonds on the Stock Exchange you paid the current price for them and received what bonds were delivered under 51
the purchase, did you not?

A. Such was the case whenever I bought bonds that way.

59 x Q. When you bought bonds off the Exchange, did you ever pay to the person from whom you bought them, and if so to whom more than five per cent. in excess of the then market price of that kind of bonds at the Exchange?

A. I should say not more than five per cent. above the Stock Exchange quotation for "old" bonds, 52
but fully 15 per cent. above the Stock Exchange quotations for "new" bonds.

60 x Q. Have you ever bought off the Stock Exchange "new" bonds and paid for them more than 5 per cent. above the market price at the Exchange for "new" bonds?

A. I never bought a "new" bond off the Stock

53 Exchange to the best of my recollection, and very few indeed at the Stock Exchange, and those long before the commencement of these suits if I ever bought any at all.

61 x Q. To whom and when did you ever pay as high as 5 per cent. for selecting bonds?

A. I have several times given the names of all the brokers through whom I ever bought any Tennessee bonds from whom counsel can obtain all the information he seeks if disposed to make sufficient
54 effort.

62 x Q. Can you give me the name of any broker or other person to whom you ever paid as much as 5 per cent. for the privilege of selecting bonds?

A. I did not testify that I ever paid as high as 5 per cent. for the privilege of exchanging bonds; as I recollect my testimony it was 3 per cent. as the highest that I thought I ever paid for exchanging bonds.

63 x Q. How low a premium did you pay for the
55 privilege of exchanging bonds?

A. One-eighth of one per cent. was the lowest.

64 x Q. Did you notify the persons from whom you received the bond that you were giving them an unsecured bond and receiving from them a secured bond as you thought?

A. I think, in fact I know that the brokers must have been aware of that fact for they offered them to me and that was inducement held out by them for me to pay the difference in exchange.

56 65 x Q. Did you yourself notify any of the persons with whom you exchanged such bonds of that claim?

A. I bought the bonds through brokers, not meeting with the original owners.

66 x Q. Did you notify the original owners or were they to your knowledge notified of that claim?

A. I certainly did not, for I certainly could not 57
notify parties whom I never saw or knew even if it were the least incumbent on me to do so.

67 x Q. As I understand you what you did was to pay the brokers who held the bonds from ½ per per cent to 3 per cent, to exchange unsecured bonds for those which you considered secured; is that correct?

A. I think it would be more correctly expressed by stating that brokers sought me and offered to sell and exchange such bonds on their own terms, either 58
for account of their customers or themselves.

68 x Q. Did you never go yourself to a broker's office and propose such a transaction?

A. I certainly have frequently informed brokers that I was ready to buy or exchange such bonds, and as soon as they became aware of that fact they have shown themselves ready to notify me when they had such bonds for exchange or sale.

69 x Q. Can you name any broker from whom you have bought "Old" bonds, between the time 59
when you first knew of this claim of lien in or about June, 1878, and the commencement of these suits, to whom you paid as much as five per cent. above the then market price of "Old" Tennessee bonds, for the privilege of receiving only what you considered secured bonds?

A. As I have before stated, my impression is that I paid as much difference as that, that was for one very large and select lot of bonds; the name of the broker through whom they were purchased has al- 60
ready been given by me, and is on the record.

70 x Q. What is the name of that broker?

A. Counsel for defendant can ascertain if he is disposed to see the different brokers through whom I bought bonds, and all of whose names I have given.

71 x Q. Do you decline to give the name of the broker from or through whom you bought this particular lot of bonds?

A. I do not decline for I have already given it.

61 72 x Q. Have you ever given it in your testimoy in this case except in conjunction with the names of all other brokers with whom you dealt?

A. I have not and do not propose to.

73 x Q. Cross question 70 repeated?

A. I have already put counsel for the defendants in the way to ascertain the information that he seeks I will not oblige him further.

(Counsel for defendants insists upon an
62 answer to this question, and proceeds with further cross-examination of witness without waiving his right to insist upon this question being answered).

74 x Q. At what time did you purchase this particular lot of bonds?

A. I should say within three months before the commencement of these suits.

75 x Q. At what price did you purchase them?

63 A. I decline to answer such an impertinent question.

76 x Q. Cross-question 75 repeated.

A. I would state that I shall decline to answer any and all questions which I regard as impertinent and unnecessarily inquiring into my private affairs.

(Counsel for defendants insists upon an answer to this question, and proceeds with further cross-examination of witness without
64 waiving his right to insist upon this question being answered).

77 x Q. Have you any book of account or memorandum book which contains any entry of the date and price of your purchase of this lot of bonds?

A. I certainly have.

78 x Q. Is it now in your control ? 65

A. It is.

79 x Q. Have you any such book with you here ?

A. I have not.

80 x Q. Where is it ?

A. At my house.

81 x Q. How is it designated ?

A. That is another question which I do not propose to answer.

82 x Q. Will you produce that book at the continuation of your examination to-morrow ? 66

A. I certainly will not produce that or any other book that unnecessarily makes public my private affairs.

83 x Q. Do you decline to produce that book before the Examiner after sealing up the other entries in the book except the entries relating to the purchase of this particular lot of bonds ?

A. I certainly do, although I would willingly do so were it not for the impertinence of the demand and the fact that R. T. Wilson, whom counsel for 67 defendants represents, positively refused to produce important books and papers that complainant demanded.

(Defendants' counsel objects to so much of the foregoing answer as follows: the words "I certainly do," as irresponsive.

Adjourned to 15th inst., at 2:30, P. M.

68

15th April, adjourned to 17th, 11 A. M.

69 NEW YORK, April 17th, 1880, 11 A. M.

Present—Counsel as before.

84 x Q. Can you now tell us what was the highest and what the lowest price which you paid for bonds between about June, '78, when you first knew of the claim of lien, and January, 1879, when the suits were commenced?

A. Not more definitely than I already have, without referring to my books, on which point I have
70 not posted myself since the last examination.

85 x Q. Have you no memoranda with you by reference to which you can give an accurate or approximate statement in regard to this matter?

A. I have not. From my recollection I should say that the highest price I paid for those with regular coupons on was 42½. But the highest price paid for any of the bonds given me by my father was 85⅝, while the highest price which I paid for bonds that I bought myself before my father's death
71 was 57.

(Respondents counsel objects to so much of the last answer as follows "42½.)"

86 x Q. What was the date at which you paid 57 for bonds purchased by you?

A. I will answer that question when counsel calls for the memorandum that he demanded at the examination on the 13th inst.

72 87 x Q. Have you here present the bill or account of the purchase of the bonds for which you paid 57?

A. I have, and in answer to the demand which counsel for defendants made for those and other memoranda at the adjourned examination of April 13th, 1880, would say that at the close of this deposition I will allow counsel for defendants to in-

spect them to his fullest satisfaction. Were it merely to oblige him individually I would willingly produce them during this present examination, but I cannot favor the defendants with any further pretext, either for obstructing and postponing the trial of these causes, or to add to their already imposing mass of irrelevant testimony by which they are seeking to encumber the record, and thereby hoping to confuse and bewilder justice, and certainly it is not in the least incumbent that I should give aught of favor to such notoriously bad characters as the Memphis and Charleston and other railroad companies of Tennessee which have so mercilessly wronged the Tennessee bondholders—corrupt and avaricious debtors that have enriched themselves at the loss of their unfortunate creditors—heartless corporations which in their selfish greed have done so much to ruin the credit and drag down to shame their very mother State to whom they owe their being. That it may not be said that I base my assertions merely on current rumor, I would specially call the attention of the Court to the public records of Tennessee, whose pages are black with proof of railroad corruption and sin. I take from those records but two specimens. I offer in evidence and make a part of this my deposition, copies of the testimony given by M. C. Galloway at Nashville, Tennessee, February 7, 1879, and also that of Rev. N. W. Motheral, given at Cleveland, Tennessee, February 10, 1879, both taken before the State Committee, appointed to investigate the State debt.

73 74 75 76

(Counsel for defendants objects to all the previous statement after the words "I have" as irresponsive, irrelevant and idle perversion of the requirement that the examiner shall reduce to writing all the statements of the

77 witness, and objects to the documents referred to by the witness as incompetent, immaterial and irrelevant, and as obviously not proper evidence in the cause, nor proper to be annexed to witness's deposition.)

(Copy Galloway's testimony offered in evidence, and marked Complainant's Exhibit No. W. H. D. L., Sp'l Ex'r.)

78 (Copy Motheral's testimony offered in evidence marked Compl't's Exhibit. No. W. H. D. L., Sp'l Ex'r.)

88 x Q. Will you now produce the bill or account of the purchase of the bonds for which you paid 57?

A. I certainly will not for the reasons already given.

89 x Q. What was the date of the purchase by your father of Tennessee bonds at $85\frac{5}{8}$?

A. I decline to do that for the reason already
79 given.

90 x Q. What is your best recollection in regard to the lowest price at which you purchased bonds between June, 1878, and January, 1879.

A. I should say not lower than thirty.

91 x Q. You have spoken of bonds being bought by you between June, 1878, and January, 1879, with regular coupons on; state what coupons that included.

A. I mean all such coupons that up to that date
80 were due and unpaid. During the interval between June, 1878, and January, 1879, there were the six unpaid coupons previously falling due, besides those thereafter to accrue.

92 x Q. The prices which you have mentioned were prices for the bonds with their coupons on, were they not?

A. Certainly.

93 x Q. Do I understand you that in or about June, 1878, after hearing read Mr. Wilson's letter of June 11th, 1878, you procured and read a copy of Humes and Poston's brief in opposition to the claim of the Tennessee bondholders to a lien upon the railroads to which bonds were loaned by the State ? 81

A. Such was the case.

94 x Q. That brief contained a statement of the position of Railroad Companys in opposition to the claim—that the bondholders were entitled to a lien, did it not ? 82

A. Such is my recollection of the brief ; the brief itself is the best evidence of what it contained.

95 x Q. Was that the first knowledge that you had of the settlements which had been made by the Railroad Company's with the State, or had you not previously known generally about the facts in regard to such settlements or of some of them ?

A. That must have been about the time of my first knowledge of those facts, for I certainly did not know them at the date of the telegrams and letters 83 to Governor Porter, bearing my signature, all of which were written in December, 1877.

96 x Q. Between December, '77 and June, '78, had not these settlements been referred to in conversation with you either by Mr. Wilson or other persons concerned in Tennessee affairs ?

A. They certainly could not have been referred to in conversation with me prior to December 11th, '77, for I had never before during my life met with Mr. Wilson until that day ; nor by any other per- 84 son, for had I been aware of such facts I would not have allowed such telegram and letter to have been sent—between December 11th, '77 and June, '78 ; I have no recollection as to the specific date when I was first informed of it, at least more specifically than I have stated—I mean between December 11th, '77 and June, '78.

85 97 x Q. Then I understand you that it was between Dec. 11, '77, and June, '78, according to your best recollection, that you learned of these settlements?

A. Such is the case.

98 x Q. Were all the bonds which you have proved in the six cases which I have previously referred to bonds which were registered under the Act of 1873?

A. I so understand it.

86 99 x Q. Have you ever, prior or subsequent to the bringing of these suits, at any time requested or demanded of the Governor of Tennessee that he appoint a receiver to take charge of and operate the railroads involved in the cases above referred to, and out of the earnings of said railroads pay the coupons due on said bonds sued on herein?

A. I have not.

100 x Q. Have you ever, since your ownership of said bonds herein sued on made any legal effort to
87 require the Comptroller or Treasurer of Tennessee to apply the revenues of said State, collected by said State, to the payment of the past-due coupons on said bonds?

A. I have not.

101 x Q. Please examine original letters to the Governor of Tennessee, dated February 15, 1877, in which there is a proposition to the State of Tennessee to give up the State bonds held by those sending said letter and accepting in their stead new
88 bonds of the State of Tennessee to be thereafter issued bearing 3, 4, 5 and 6 per cent. interest, and whether the signature "Calvin Stevens, by C. Amory Stevens, Att'y," is or is not your signature, and whether said proposition was forwarded to the Governor of Tennessee with your consent?

A. Representing the bonds belonging to my father, I did sign that letter, but nearly all the

bonds there represented, and also represented by 88
me in subsequent telegrams and letters to the Governor of Tennessee, were plain State bonds unsecured by any railroad lien; I do not know if the letter went to the Governor, but presume it did.

102 x Q. By 50 and 6 in your telegram you meant that in exchange for the old bonds new bonds of the State should be given for 50 per cent. of the amount of old bonds and accrued interest, coupons of the new bonds to be made receivable for taxes, interest to be at 6 per cent. on the new bonds? 90

A. I understood that to be the meaning of the offer which R. T. Wilson made in a telegram sent over my name.

103 x Q. Did you not state to Mr. Wilson at or before the date of said dispatch, and on that day, that you were willing to take the 50 and 6, and that you would see others and ascertain whether they were not also willing to do so?

A. In my ignorance as to the true facts of the case I did give that assurance to Mr. Wilson and 91
fulfilled my promise.

104 x Q. The dispatch was read over to you before signing it, was it not?

A. It was either read over to me or else I read it over hastily myself, so hastily indeed that not until my recent examinations with Messrs. Fentress and Wright did I become aware of the evident misstatement that I was a signer of the former petition sent to Governor Porter through the committee of arbitration. I can find no evidence, and I certainly have 92
no recollection of having signed that petition.

105 x Q. After sending the telegram of December 11, 1877, and the letter of about the 15th December, '77, to Governor Porter, did you not go to Mr. Iselin's office and exhibit to the younger Mr. Iselin copies of the telegram and letter to show what you were doing in Tennessee matters?

93 A. In my ignorance, and while supposing that R. T. Wilson had fully posted me as to the true facts of the situation, I did have such an interview with Iselin and showed him what had been done.

NEW YORK, April 22, 1880.

Present—Counsel as before.

Re-direct Examination.

106 Q. Now that you have been assured by the
94 counsel for defendants that they do not seek to further postpone the trial of these causes, and that you have examined more fully than ever books and memoranda in reference to your Tennessee bonds, will you please answer all unanswered pertinent questions?

A. I will do so with pleasure.

107 Q. How many Tennessee bonds did your father register in 1873?

A. Eighty-four.

95 108 Q. How many did he fund?

A. Forty-two. I annex a copy taken from my father's cash book, under date of Sept. 5, 1873, showing the transaction.

(Copy annexed, marked Complt's Exhibit No. 7, W. H. D. L., Sp'l Ex.)

109 Q. Did he both buy and sell Tennessee bonds after 1873 and prior to his death?

A. He did.

96 110 Q. How many Tennessee bonds did he give you?

A. He gave me one hundred and ten—$110,000.

111 Q. How many of the $110,000 were "New Bonds?"

A. Sixty-five—$65,000.

112 Q. How many Old Bonds, 6%, color white, Letter B, did he give you?

A. Forty-four—$44,000, and one Old Bond, 5%, 97
color white, No Letter $1,000.

113 Q. Please give the numbers of the forty-four Old Bonds, color white, Letter B?

A. The numbers are: 7829, 968, 7173, 3566, 7021, 7020, 11,567, 6643, 11,472, 2340, 8766, 9710, 1842, 11,400, 2109, 7839, 8709, 1807, 9551, 8424, 8718, 649, 4479, 1162, 8824, 8012, 1037, 8716, 9459, 9066, 897, 10,058, 263, 10,793, 1068, 10,060, 5,674, 7432, 4494, 1234, 11,744, 992, 717, 8717.

114 Q. Did you own any bonds prior to your 98
father's death, and aside from those which he gave you?

A. I owned nine—$9,000, $5,000 of which I bought September 25, 1874, through John Buckley, Jr. at 57, Nos. 9867, 9889, 9868, 5421, 2714, color white, Letter B. January 7, 1875, I also bought through John Buckley, Jr., $1,000 at 55¾, No. 9461, color white, Letter B, and February 20, 1877, I bought through Hooper & DeWing, $3,000 at 43, Nos. 7422, 8307, 11,322, color white, Letter B. 99

115 Q. After your father's death, and before June, 1878, before you had read the Tennessee Statutes and had informed yourself as to the Tennessee Railroad Lien, and so called subscriptions, and before you had contemplated forcing the railroad companies to recognize their dishonored obligations, how many additional Old Tennessee Bonds, 6%, color white, Letter B, did you buy?

A. Between October 29, 1877, and March 30, 1878, 100
I bought through H. T. Morgan & Co., thirty-two—
$32,000.

116 Q. Then I understand that the aggregate amount of old Tennessee 6% bonds, color white, letter B, which you bought individually before your father's death, together with what you received from him by gift before his death, and what you bought additional after March 15, 1877, before you contem-

101 plated suing the railroads, amounted to ninety-five ($95,000).

A. Such is the case.

117 Q. How many of those ninety-five bonds were Tennessee Railroad lien bonds?

A. I should say nearly all; at least fully nine-tenths. I find that my father gave me more railroad lien bonds than I had supposed.

118 Q. In your previous depositions you gave 85⅝ and 90 as the highest prices paid for Tennessee
102 bonds by your father. Were your impressions fully accurate?

A. I find that they were not quite so. His books show that during March, 1873, he paid 86½ for three different lots, the highest prices recorded among his purchases.

119 Q. Through whom did you purchase the lot of railroad lien bonds at 42½ referred to in your last deposition, and at what date?

A. Newton Deuel, Esq., on Nov. 25, 1878.

103 120 Q. Have you read the circular of the late "Agent for the State of Tennessee," S. Watson, Esq., published in 1868, in which, after narrating the condition and prospects of the various railroad companies of Tennessee in which the railroad lien bondholders were so vitally interested, he says: "The important question for the bondholders now is, What security have I for the payment of the principal and interest of my bond? The State debt proper is only about $4,000,000. The railroads and
104 all their rolling stock are mortgaged to the State to secure the payment of bonds loaned. This mortgage, as bondholders must know, inures to their benefit. For the payment of $29,000,000 of bonds, which will be the entire amount of bonds issued to the roads, including those that may be issued under the recent act of the Legislature, the bondholders have as security roads which, when completed,

will be nearly 2,000 miles in length, and which will have cost, and which will be worth, fully $70,000,000. In addition to that, they have the whole resources of the State solemnly pledged to them ?" 105

(Objected to as incompetent, immaterial and irrelevant and a plain perversion of the duty required of the Examiner to take and return whatever testimony and Exhibits are presented to him.)

A. I have read that important document, an original copy of which I herewith offer in evidence, and make a part of this my deposition. 106

(Respondent's counsel objects to the document being received in evidence or annexed to the deposition as incompetent, immaterial and irrelevant, and not properly proven in the case.)

(Copy document offered in evidence; marked Complainants Exhibit No. 8, W. H. D. L., Spl. Exr.) 107

Re-cross-examination by Mr. TWEED:

121 x Q. What prices did you pay for the $32,000 in bonds purchased by you between October 29th, 1877 and March 30th, 1878, and what were the dates and amounts of the respective purchases ?

A. As to the prices, speaking from memory, I should say that they were from 38 to 43; as to the dates: 108

$1,000	was	bought	Oct. 29th,	1877,	at	43⅛
$1,000	"	"	Nov. 3	"	at	43⅞
$10,000	"	"	Dec. 12	"	at	43⅛
$3,000	"	"	Jany. 30	1878,	at	39⅛
$10,000	"	"	M'ch 22	"	at	39⅛
$2,000	"	"	M'ch. 25	"	at	38⅞
$5,000	"	"	M'ch. 30	"	at	39⅛

109 122 x Q. Of these bonds those purchased before January, '78, carried only four matured coupons, and those purchased after January, '78, carried at the time of purchase five matured coupons; whereas those you purchased between July, '78, and January, '79 carried six matured coupons.

A. Yes.

123 x Q. And the prices you paid between October, '77, and March, '78, when you did not know anything about the lien, ran from 38 to 43, whereas
110 the prices for those carrying one or two more coupons which you purchased between July, '78, and January, '79, when you knew of the claim of lien, ran from 30 to 42½, did they not?

A. That is about correct I think, though I spoke from memory when I said I bought as low as 30. It is also true that I paid as high as 52½ for a few bonds carrying extra coupons bought before January, 1879.

124 x Q. How many bonds were those you paid
111 52½, and how many extra coupons did they bear?

A. Two bonds. I do not recollect the exact number of coupons: On reference I find there were 15 extra coupons.

125 x Q. What was the peculiarity about the lot of bonds for which you paid 42½?

A. They were all railroad lien bonds in contradistinction to bonds issued solely for State purposes, and which constitute the State debt proper.

126 x Q. Did those bear any extra coupons?

112 A. They did not.

127 x Q. How many were there in that lot?

A. $116,000.

128 x Q. Prior to July, 1878, had you sold any of the Tennessee bonds which you had yourself purchased, or had received from your father?

A. I had sold the entire 65 new bonds given me by my father.

129 x Q. When did you sell those? 113

A. $21,000 were sold May 16th, May 22d, July 25th, 1877; $44,000 were sold August 20th, August 21st and August 27th, 1877.

130 x Q. Prior to July, 1878, had you sold any part of the $95,000 of old Tennessee 6% bonds, color white, letter B, which you have referred to in your direct examination to-day?

A. On December 26, 1877, I find a record of sale at $20,000 of those bonds.

131 x Q. Have you ever sold any others of those 114
$95,000 of those bonds, except the $20,000 just referred to?

A. I know that I exchanged a few of them, but I cannot state positively if I sold any more of them, excepting No. 3,566, color white, letter B,—a graveyard bond which was too ghostly for me to keep.

132 x Q. Except the two bonds which you bought at 52½ and which carried fifteen extra coupons, and the particular lot of bonds which you bought at 42½; what was the highest price you paid for 115
bonds between June, 1878, and January, 1879?

A. I could not say positively, but I should say between forty and forty-five.

133 x Q. Have you not already stated that 42½ was the highest price which you paid, and that for a particular lot of bonds, for any bonds except those that carried an extra lot of coupons?

A. I have, speaking from memory.

CALVIN AMORY STEVENS.

116

134 x Q. Where did you first read the pamphlet, Exhibit No. 8?

A. As I recollect it, either that copy or the copy I first read was in this city, and came from James G. Kings Sons, bankers; I either borrowed it from that house and read it at home, or from Mr. Geddes, who had borrowed it of them.

117 135 x Q. When was that?

A. I should say, as nearly as I can recollect, on or about May 17, 1879.

136 x Q. Did you ever see any authorization from the State of Tennessee to S. Watson to act as its agent?

A. Only such authorization as the document itself shows by the signature "S. Watson, Agent for the State of Tennessee."

137 x Q. The signature then on the first page of
118 this paper, "S. Watson, Agent for the State of Tennessee" is then the only knowledge you have of his agency for the State?

A. Yes.

CALVIN AMORY STEVENS.

Subscribed and sworn to before me this 22d day of April, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

119 I, WILLIAM H. DE LANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annxed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit, and examined, and the deposition was
120 reduced to writing and read to the witness, and by him subscribed in my presence; and that the exhibits hereto annexed, marked "Complainant's Exhibits No.'s 1, 2, 3, 4, 5, 6, 7 and 8, W. H. D. L., Spl. Exr.," were introduced in evidence in said cause during the taking of said deposition.

Dated April 22, 1880.

WILLIAM H. DE LANCEY,
Special Examiner.

121

COMPLAINANT'S EXHIBIT No. 1.
W. H. D. L., Spl. Exr.

D'r Sir: Please call & see me at y'r earliest convenience.

C. H. BOSHER,
2 Ex. Court.

C. A. STEVENS. Dec. 10/77.

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COMPLAINANT'S EXHIBIT No. 2.
W. H. D. L., Spl. Exr.

Telegram.

MINING EXCHANGE, Dec. 10, 1877. 123

C. A. STEVENS,
32 West 32d street.

I am exceedingly anxious to see you to-day about Tennessee matters. Can you call here, or where can I see you.

CHARLES H. BOSHER,
2 Exchange Court.

124

125 COMPLAINANT'S EXHIBIT—NO 3,
W. H. D. L., S'p'l Ex.

SUPREME COURT OF THE UNITED STATES.

RODOLPH MERIAN, *et al.*,
Appellants,

126 *vs.*

WILLIAM B. DUNCAN, *et al.*,
Appellees.

PETITION OF COMMITTEE

OF

127 TENNESSEE BONDHOLDERS.

GEORGE HOADLEY
E. L. ANDREWS,
EDGAR M. JOHNSON.
Of Counsel.

128

RODOLPH MERIAN, *et al.*,
Appellants,

vs.

WILLIAM D. DUNCAN, *et al.*,
Appellees. 130

OCTOBER TERM, 1877.

No. 1037.

To the Honorable the Judge of the Supreme Court of the United States:

The petition of Eugene Kelly, Peter Geddes, R. S. Moran, John T. Terry and J. G. K. Duer, on their own behalf, and, as a committee, representing sev- 131
eral millions of dollars in bonds of the State of Tennessee, more than of which have been already ascertained to be of the Internal Improvement Bonds of said State, respectfully shows to the Honorable, the Supreme Court of the United States.

That on the 11th February, 1852, the Legislature of Tennessee passed an act designed to aid in the development of internal improvements in said State 132
by means of Railroads. By that act the State proposed to constitute certain of its own bonds about to be issued to specified railroad companies named in the act, the paramount liens on the property of the respective railroad companies to which they should be issued, and by such security to facilitate their sale and induce their purchase by investors and the public.

133 This object was carried into effect by providing in the act, authorizing the issue of the bonds, and in the section or that act operating as a statutory lien, as follows:

"So soon as the bonds of the state shall have been issued for the first section of the road they shall constitute a lien upon said section." And a like lien for subsequent sections was provided for in said act for the *payment* by said company of said
134 bonds, with interest thereon, as the same becomes due. The said act was, by tha 18th section thereof, declared to be deemed and taken "to be a public act as to all purposes of notice."

Thereafter, when the Mobile and Ohio Railroad Company, and other railroad companies, had accepted the terms and conditions of this statute, the Internal Improvement Bonds were issued to the said railroad companies.

135 Your petitioners show—

That the proceeds of the said bonds, authorized by the said acts to be issued with the aforesaid lien to secure the same on the face of the law authorizing their issue, were required by said statutes to be applied strictly to the construction of the respective roads to which the bonds were respectively issued.

The bonds were sold by the Mobile and Ohio Rail-
136 road Company and the other railroad corporations, to *bona fide* purchasers in the following:

Amounts.	Constituted Liens On.
1,298,000	Mobile and Ohio Railroad,
1,290,000	East Tennessee and Georgia Railroad.
388,000	Hiawassee Railroad.
1,461,000	East Tennessee and Virginia Railroad.
68,000	Lagrange and Memphis Railroad.
963,000	Memphis and Charleston Railroad.
533,000	Tennessee and Alabama Railroad.
423,000	Central Southern Railroad.
1,335,000	Memphis and Ohio Railroad.
126,000	Mississippi and Tennessee Railroad.
404,000	McMinnville and Manchester Railroad.
434,000	Louisville and Nashville Railroad.
566,000	Winchester and Alabama Railroad.
956,000	Memphis, Clarksville and Louisville Railroad.
191,000	Rogersville and Jefferson Railroad.
774,000	Edgefield and Kentucky Railroad.
709,000	Knoxville and Kentucky Railroad.
457,000	Charleston Railroad.
562,000	Mississippi Central Railroad.
1,653,000	Nashville and Northwestern Railroad.
157,000	Nashville and Chattanooga Railroad.
211,000	Knoxville and Charleston Railroad.
86,000	Tennessee and Pacific Railroad.
96,000	Southern Railroad.
48,000	Carolina Railroad.
28,000	Evansville, Hudson and Nashville Railroad.
76,000	Nashville and Decatur Railroad.
$15,044,000	

137 138 139

Of the said bonds so issued in aid of the construction of the Mobile and Ohio Railroad Company, these petitioners are the holders and representatives of bonds to the amount of $, and of bonds issued to the other roads above named, under the same statute, these petitioners are the owners and representatives of $. 140

Your petitioners show,

With the proceeds of the sales of the said Internal Improvement bonds, by the respective companies, their railroads in Tennessee were mainly completed by the purchase and laying of the rails thereon, and were equipped.

141 That for some years the interest on each issue of said bonds were provided by the respective railroad companies for whose benefit they were issued, according to the terms of the above Internal Improvement Act constituting said bonds liens on their respective roads to secure such payment.

That in the years 1869 and 1870, the General Assembly of Tennessee passed certain acts, under color of which efforts have been made to impair the
142 aforesaid lien of the Internal Improvement bonds, and in fact utterly to destroy the same, by the attempted transfer of the lien by the State of Tennessee for its own benefit.

That when said scheme became known, the holders of the Internal Improvement bonds of Tennessee were greatly alarmed at this attempted invasion of their security, and sought the advice of counsel in respect of the same. There was furnished to them the opinion hereto attached, marked Exhibit "A."
143 (Dunt's Opinion.) The subject of the unlawful attempt of the State of Tennessee was discussed frequently in the public prints, and on the various exchanges where the said securities were sold.

Your petitioners show,

That the Legislature of Tennessee undertook to empower the Mobile and Ohio Railroad Co. to issue
144 a series of bonds to purport to be secured by the statutory lien belonging to your petitioners' bonds, and though your petitioner's bonds were still outstanding and unpaid, and even then in default as to interest.

When the said bonds were about to be issued under the name of Substitution Bonds, the bankers offering the same for sale in Geneva, London and

other financial centres, we are informed and believe, 145
were warned of the invalidity and injustice of their pretended claims to hold the liens conferred by statute on the outstanding bonds issued to build the roads. The sellers of the substitution bonds sought to sustain their position by legal advice, and obtained the opinion hereto attached, marked Exhibit "B." This opinion was attached to the prospectus for the sale of said bonds, and the purchasers thus became fully aware of the infirmity in their claims, sufficiently disclosed even in said opinion in favor 146
of their validity.

Your petitioners likewise show,

That they have very recently learned of the existence and pendency of this suit, and that it was brought by some of these substitution bondholders, and that they claim therein to enforce your petitioners' lien on the Mobile and Ohio Railroad in their own favor, and of which, by virtue of the original statutes. the Internal Improvement bond- 147
holders were made the owners and beneficiaries.

Your petitioners have also learned that the said cause has been set for hearing before this honorable court on April 22d, 1878.

Neither your petitioners, nor their trustee, nor any of the Internal Improvement bondholders, have been made parties to the said litigation, nor have they received notice of the same, except only as they learned of the same quite lately from the 148
newspapers.

Your petitioners show,

That on or about the 16th day of January, 1878, there was issued the following :

149 CALL FOR A MEETING OF TENNESSEE BONDHOLDERS.

Notice.

The holders of the State of Tennessee bonds are earnestly requested to meet at the office of John B. Manning, No. 14 Wall street, on Wednesday, January 16th, at 12 o'clock.

E. D. MORGAN & Co.,
BROWN BROTHERS & Co.,
EUGENE KELLY,
150 GEDDES & SMITH,
JAMES G. KING'S SONS,
A. H. POMEROY,
GEORGE W. STANTON,
C. AMORY STEVENS.

That in pursuance of said notice a public meeting of the holders of Internal Improvement bonds above described, and of like character therewith, was held in the City of New York, and at said meeting your
151 petitioners were selected as a committee to represent and further the interests of said bondholders; and your petitioners accepted the said appointment, and since said time have been diligently engaged in preparations for the enforcement of the rights of said bondholders.

Your petitioners show.

That in pursuance of the duties devolved on them as the committee aforesaid, they have published
152 notices of their proceedings and they maintain a registry of said bondholders in the city of New York, where they have received authority to represent them from a large proportion of holders of Tennessee Internal Improvement bonds, aggregating

And your petitioners are advised by counsel, and respectfuliy submit to the Supreme Court, that the

said substitution bonds, claiming to succeed to your 153
petitioners' lien, by virtue of an *assignment* by the State of Tennessee, are to be fully heard before this court in respect of their *claim* to own the said lien at the time above mentioned.

While the said claim of the substitution bonds has been contested by Rudolph Merian and others, holders of the sterling mortgage bonds of the Mobile and Ohio Railroad, your petitioners have not been afforded any opportunity to be directly represented before the Circuit Court, or the honorable 154
the Supreme Court.

Your petitioners represent that the holders of the Internal Improvement bonds are very numerous, and reside in various parts of Europe and the United States, and rely in great part on your petitioners for the protection of their rights.

And now your petitioners humbly seek for a hearing before this court, at least as *amici curiæ*, in a matter involving the determination of questions so 155
nearly affecting them, and in respect of which the formation of any opinions by the Supreme Court in the absence of the direct and efficient representation must seriously prejudice the future prosecution of their rights.

And your petitioners pray for leave to intervene herein, and that if need be the causes be remanded so that they may be made parties thereto:

And your petitioners pray for such other relief as 156
may be just in the premises.

EUGENE KELLY.
PETER GEDDES.
JOHN T. TERRY.
J. G. K. DUER.
R. S. MORAN.

GEORGE HOADLY,
E. L. ANDREWS,
EDGAR M. JOHNSON,
Solicitors and of Counsel for Petitioners.

157 UNITED STATES OF AMERICA, }
Southern District of New York, } ss.

being duly sworn, deposes and says: That he is one of the petitioners named in the foregoing petition; that he has read the said petition and knows the contents thereof; that the said petition is true of his own knowledge, except as to the matter of record referred to therein, and as to said matter he believes the same to be true.

158 Sworn to before me this }
day of April, 1878. }

159

160

COMPLAINANTS' EXHIBIT No. 4. 161

W. H. D. L., Sp'l Ex'r.

UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT, EASTERN DISTRICT OF TENNESSEE.

IN EQUITY. 162

CALVIN AMORY STEVENS, *on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the East Tennessee and Virginia Railroad Company, under the Act of Jan. 15th, 1852,*

versus 163

The East Tennessee, Virginia and Georgia Railroad Company.

BILL FOR RELIEF.

E. L. ANDREWS and
GEORGE HOADLY, 164
Solicitors, and of Counsel for Complainant.

165 UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT—EASTERN DISTRICT OF TENNESSEE.

(*In Equity.*)

To the Honorable, the Judges of the Circuit Court of the United States for the Sixth Judicial Cir-

166 cuit and Eastern District of Tennesse:

Your orator, CALVIN AMORY STEVENS, who is a citizen of the State of New York, brings this his bill of complaint against the East Tennessee, Virginia and Georgia Railroad Company, which is a citizen of the State of Tennessee, and is a corporation organized, existing and transacting business in said State, by virtue of and under Acts of its General Assembly.

167 And, thereupon, your orator complaining shows unto your Honors, that, on the 15th day of January, 1852, the General Assembly of the State of Tennessee passed an Act in the following language: "An Act to authorize the Governor of the State to issue Bonds of the State of Tennessee to the Ea[st] Tennessee & Virginia Railroad Company."

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That for the purpose of aiding the East Tennessee & Virginia Railroad

168 Company in the construction of bridges on their said railroad, the Governor of the State is hereby authorized and required to issue coupon bonds of the State of Tennessee, to said company, to an amount not exceeding the sum three hundred thousand dollars, bearing an interest of six per centum per annum payable semi-annually at such place as the president of said company may designate, which bonds

shall be payable in not less than thirty, nor more 169
than forty years after date, and at such place as said president may designate, but said bonds are to be issued as hereinafter provided.

SEC. 2. Be it enacted, That whenever it shall be made known to the Governor to his satisfaction by the president and directors of said company, that forty miles of said railroad have been put under contract and that the work on the same is progressing to completion, and that said company has 180
sufficient *bona fide* subscription to grade and put the necessary culverts on said section of forty miles ready for the iron rails, which subscription shall be adjudged solvent and valid by the Board of Internal Improvements, or any chief-engineer or other persons appointed to examine and report upon works of internal improvement, then it shall be the duty of the Governor to issue to said Company coupon bonds of the State of Tennessee, of the description aforesaid, to an amount not exceed- 171
ing one hundred thousand dollars, to be expended on the bridges necessary to be constructed on the said section of forty miles. And in like manner when a second section of forty miles shall have been put under contract, and the work thereon progressing, and said company has sufficient *bona fide* subscription to grade and put on the necessary culverts as aforesaid, ready for the iron rails, which subscription shall be adjudged solvent and valid by the Board of Internal Improvements, and all of 172
which facts shall be made known to the Governor, in the manner aforesaid to his satisfaction, then it shall be the duty of said Governor to issue to said company, coupon bonds of the State of Tennessee, of the description aforesaid, for an amount not exceeding one hundred thousand dollars, to be expended on the bridges necessary to be constructed

on said section of forty miles, and a like provision with like restrictions and conditions in all respects is hereby made for an additional section of forty miles of said railroad, the funds to be used in construction of the necessary bridges on said last-named section.

SEC. 3. Be it enacted, That so soon as the bonds are issued for the first section of forty miles, as provided in the first section of this Act, the said bonds shall, on the issuance thereof, constitute a lien upon all the stock of said company, upon the road-bed, masonry, bridges and other property of said company, and the State shall be invested with such lien on and by virtue of the issuance of said bonds, without a deed from the company for the payment of said bonds and interest accruing thereon; and whenever the bonds are issued for either or both of said sections of forty miles, as specified in the first section of this Act, the State of Tennessee shall on and by virtue of the issuance of said bonds be invested with a like lien or mortgage on said sections for the payment of said bonds and the interest thereon, including road-bed, masonry and bridges, on all of the said sections provided for in this Act, and on all of the stock of said company, without a deed from the company, and said lien or mortgage shall have priority over all other claims against said company, and all liens created by the company, after the issuance of the bonds for the first forty miles of said railroad, shall be void as to the liens of the State of Tennessee hereby created for the payment of the bonds issued under the provisions of this Act, and the accruing interest thereon, and the said liens of the State shall extend to and embrace the entire railroad, its superstructure and equipments after completed, and so continue until said bonds and interest thereon are paid

off and discharged, and without a deed from the company.

SEC. 4. Be it further enacted, That the legislature of this State shall have power to enact any law or laws that may hereafter be deemed necessary to protect the interest or credit of the State against loss or damage on account of the issuance of said bonds, and to provide for the more speedy and certain payment by the company of said bond and interest, not impairing the vested rights of the stockholders and that for that purpose and the purposes of notice of the existence of this Act, the same is hereby declared to be a public law.

SEC. 5. Be it further enacted, That before the Governor shall issue any bonds under the provisions of this Act, he shall require the engineer of said company to examine the premises where said bridge or bridges are to be built, and ascertain as near as he may be able, the cost of construction of such bridge or bridges with good materials, and in a good and substantial manner, and report the same under oath to the Governor; and it shall not be lawful for said Governor to issue bonds as aforesaid, for a greater amount for the construction of such bridge or bridges than the sum specified in the report of said engineer, and the provisions of this Act, shall only extend to and include a bridge across the Watauga river, two bridge across the Holston river, and a bridge across Lick creek on the line of said road. And no bonds shall issue under this Act, unless upon the written affidavit of the President of said company, and a resolution of a majority of the directors thereof, and that said bonds when issued shall not be issued for any other purpose than procuring the means for the construction of said

bridge or bridges, and it shall not be lawful for said bonds to be used for any other purpose. Provided, the estimates of said engineer shall include the masonry on the line of said road. Provided, that the bonds of the State shall not be issued to build the bridges herein provided for, until there is stock subscribed by good and solvent individuals, corporations, companies or counties sufficient to grade the road and put the timbers on the same from Knoxville to the Virginia State line, which facts shall be certified to the Governor of the State by the written affidavit of the president and directors of the said road. And provided further, that the three hundred thousand dollars of bonds hereinbefore authorized to be issued to said company, may be included with the aggregate amount of stock subscribed by good and solvent individuals, corporations, companies or counties, and if the said sum of three hundred thousand dollars, together with said subscriptions of stock in said road, shall be sufficient to grade and build the bridges and masonry thereon, and otherwise prepare the said road for the iron rails, which facts shall be made to appear by the report of the chief engineer of said road on oath to the Governor, then it shall be the duty of the Governor to issue to the said company upon the application of the president and a majority of the directors of said company, the bonds of the State for three hundred thousand dollars, as provided in the first section of this Act, and the proceeds of said bonds shall be applied to the construction of the bridges specified in the fifth section of this Act, and the masonry on the line of the said road, and the surplus, if any, to any other bridges on the line of said road, or other purpose necessary to prepare the said road for the iron rails.

SEC. 6. Be it enacted, that it shall be the duty of 185
said company to deposit in the Bank of Tennessee,
at Nashville, at least fifteen days before the interest
becomes due, from time to time upon said bonds is-
sued as aforesaid, an amount sufficient to pay said
interest, including exchange and necessary commis-
sion, or satisfactory evidence that said interest has
been paid or provided for, and if said company fail
to deposit said interest as aforesaid, at the time
aforesaid, or furnish the evidence aforesaid, it shall
be the duty of the Comptroller to report that fact to 186
the Governor, and the Governor shall immediately
appoint some suitable person or persons, at the ex-
pense of the company, to take possession and con-
trol of said railroad, and all assets thereof, and
manage the same and receive the rents, issues, pro-
fits and dividends thereof, whose duty it shall be to
give bonds and security to the State of Tennessee,
in such penalty as the Governor may require for the
faithful discharge of his or their duty as receiver or
receivers, to receive said rents, issues, profits and 187
dividends, and pay over the same under the direc-
tion of the Governor towards the liquidation of
such unpaid interest. And if said company fail or
refuse to deliver up said road to the person or per-
sons so appointed by the Governor, the said persons
so appointed shall report that fact to the Governor,
who shall forthwith issue his warrant, directed to
the Sheriffs of counties, through which said road
shall run, commanding them to take possession of
said road, fixtures, equipments, and re- 188
ceive the same, and manage the entire road until a
sufficient sum shall be realized, exclusive of the
costs and expenses, incident to said proceedings to
pay off and discharge the interest as aforesaid, due
on said bonds, which being done, the receiver shall
surrender said road and fixtures and equipments to
said company. The Comptroller shall from time to

time, settle the accounts with the receiver, and the balances shall be deposited in the Treasury of this State. The Comptroller is authorized, and it is made his duty upon his warrant to draw from the Treasury any sum of money necessary to meet the interest on such bonds as may not be provided for by the company, as provided for in this Act, and the comptroller shall report thereof to the General Assembly from time to time.

SEC. 7. Be it enacted, That if said company shall fail or refuse to pay any of said bonds when they fall due, it shall be the duty of the Governor to notify the attorney general of the district in which is situated the place of business of said company of the fact, and thereupon, said attorney general shall forthwith file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by the Court to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee against any loss on account of the issuance of said bonds by ordering the said railroad to be placed in the hands of a receiver ordering the sale of said road, and all the property and assets attached thereto, or belonging to said company, or in such other manner as the Court may deem best for the interest of the State.

SEC. 8. Be it enacted, That at the end of five years after the completion of said road, said company shall set apart one per centum per annum, upon the amount of bonds issued to the Company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall

pay into the treasury of the State, after as- 193
signing them to the Governor, and for which the Governor shall give said company a receipt, and as between the State and said company, the bonds so paid in shall be a credit upon the bonds issued to the company. And said bonds so paid in, and the interest accruring thereon, from time to time, shall be held and used by the State as a sinking fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it, under the provisions of this act, 194
they shall be credited as aforesaid and cancelled. And should said company fail to comply with the provisions of this section, it shall be proceeded against as provided in the sixth section of this act.

SEC. 9. Be it enacted, That in the event any of the said road, fixtures or property belonging to said road, shall be sold under the provisions of this act, it shall be the duty of the Governor to appoint an agent for the State, who shall attend said sale and 195
protect the interest of the State, and shall, if necessary to protect said interest, buy in said road or property in the name of the State, and in case said agent shall purchase said road for the State, the Governor shall appoint a receiver who shall take possession of said road and property, and use the same as provided for in the sixth section of this act, and said receiver shall settle with the comptroller semi-annually until the next meeting of the General Assembly.

196

Your orator further shows that on the 21st of February, 1852, the General Assembly of the State of Tennessee enacted the following statute entitled "An Act to authorize the renewal of certain bonds of the State of Tennessee."

Whereas, most of the bonds heretofore issued by the State of Tennessee, were issued without having

159 coupons attached thereto, which subjects the holders to great inconvenience and the State to great expense in the payment of the interest thereon. For remedy thereof:

SEC. 1. Be it enacted by the General Assembly of the State of Tennessee, that the Governor cause to be prepared a sufficient number of coupon bonds of the State of Tennessee of the denomination of $1,000 each, made payable to or order of similar
198 language as nearly as practicable, and containing precisely the same obligations of the bonds which have been heretofore issued without coupons, except that the renewed bonds shall be made to fall due on the 1st day of January next succeeding the maturity of the old bonds, for which they are substituted, and that the coupons shall fall due on the 1st day of January and 1st of July of each year, and which said bond shall contain at their head, and on their face, in conspicuous letters, the words
199 "Renewed Bonds."

SEC. 2. Be it enacted, That on application of any person holding any bond or bonds heretofore issued by the State without coupons, and desiring to exchange said bond or bonds for like amount in bonds prepared under the provisions of the first section of this act, then it shall be the duty of the Governor to sign the number of the renewed bonds applied for, and cause them to be countersigned by the
200 Secretary of State, and the great seal of the State to be thereto affixed, and the coupon thereto to be filled up and signed by the Comptroller, and upon the surrender of the bond or bonds, so desired to be exchanged, the Governor shall issue and deliver to the person so applying an equal amount in the renewed bonds, prepared as aforesaid.

SEC. 3. B e it enacted, That the Governor shal 201
cause each of the old bonds thus surrendered to be cancelled and be filed away by the Secretary of State in his office.

SEC. 4. Be it enacted, That the Secretary of the State shall take and preserve a receipt from the person receiving a new bond, which shall contain the number, date and time of maturity of said bond, and also the number of the old bond in lieu of which it issued, and on each renewed bond he shall 202
cause to be entered the number of the old bond in lieu of which it was issued.

SEC. 5. Be it enacted, That upon the presentation of any old bond in exchange for a renewed bond, it shall be the duty of the Comptroller to compute the interest due upon said old bond up to the 1st of January, or 1st of July, as the case may be, immediately preceding the falling due of the first coupon on the renewed bond given in exchange for said old 203
bond, and to issue his warrant to the Treasurer for the payment of said interest, and that for all the services performed by the Secretary of the State, under the provisions of this act, he be allowed one dollar for each renewed bond so issued, and that the same sum be allowed the Comptroller for his services, to be paid by the person applying for said bond.

SEC. 6. Be it further enacted, That the person 204
receiving said renewed bonds shall also pay the expense of the engraving the same.

SEC. 7. Be it further enacted, That the different internal improvement companies to whom the bonds of the State may be lent under the different acts of the present Legislature, shall pay the expense of engraving and preparing the same.

205 SEC. 8. Be it enacted, That the Governor of the State shall cause to be engraved or printed, the bonds which may be issued under the acts of the present General Assembly as a loan to internal improvement companies, and the said bonds shall bear date on the first day of January, prior to their issuance, and the coupons thereto shall be payable on the first days of January and July of each year.

SEC. 9. Be it enacted, That the coupons shall be
206 signed and numbered by the Comptroller, and the bonds shall be countersigned, sealed and numbered by the Secretary of State, and upon delivering said bonds to the company authorized to receive the same, the Secretary of State shall take a receipt, reciting the number, date and amount of said bonds in a well-bound book to be deposited in his office, and the Comptroller and Secretary of State shall each be entitled to receive twenty-five cents for each bond so prepared, to be paid by the party
207 receiving said bonds.

SEC. 10. Be it enacted, That when it is proved to the satisfaction of the Comptroller of the State that coupons with interest, attached to State bonds, have been lost, and an affidavit to that effect has been or shall be made by the holder of the bond, and a bond of indemnity is executed to the State, the Comptroller is and shall be authorized to issue his warrant for the payment of the amount of the interest due, and for which the coupons issue, which
208 payment is to be made to the *bona fide* holders of the bond of the State.

Your orator shows, that the East Tennessee & Virginia Railroad Company was at the times aforesaid a body politic, chartered by the acts of the General Assembly of the State of Tennessee. The object and purpose of the creation of said corpora-

tion was the construction, completion and operation 209
of a line of railway for the transportation of passengers and freight to and from the cities of Bristol and Knoxville, in the State of Tennessee. For this purpose the said corporation was authorized to borrow money, and to impose liens upon its property to provide for and insure the payment of its liabilities.

Your orator refers to the several statutes of Tennessee concerning the said corporation, and prays further reference thereto at the hearing of this cause, so far as the same may be material. 210

Your orator shows, that in pursuance of the foregoing acts there was delivered to the East Tennessee & Virginia Railroad Company, Internal Improvement Bonds of the State of Tennessee, the same of the following description:

Color—White.

+ Letter B. +

Numbers—Number 1 to 300 inclusive.

A copy of one of said bonds and coupons is attached to this bill, marked "Exhibit A," and is prayed 211
to be taken as a part hereof. The other bonds and coupons of said issue are of like tenor, differing only in numbers and dates.

Your orator shows, that the said bonds to the amount of ($300,000) three hundred thousand dollars were received by or on behalf of the East Tennessee & Virginia Railroad Company, and were by the said company negotiated and sold to *bona fide* holders. At least one hundred of the said bonds being for the amount of one hundred thousand dol- 212
lars are now outstanding in the hands of *bona fide* holders. Your orator is the owner and holder of twenty of said bonds, each being for the sum of one thousand dollars. Your orator is likewise the owner and holder of nine coupons attached to each one of said bonds, the same representing the installments of interest for four and one half con-

213 secutive years, beginning with the installment that fell due on the 1st day of January, 1876, and including the installment that fell due on the 1st day of January, 1880, amounting in the aggregate to twenty-seven per cent. of the principal of each one of the aforeaid bonds.

Your orator shows, that the holders of said bonds are very numerous, and reside in foreign countries as well as in different parts of the United States. Their names are in great part unknown to your
214 orator, and they are, therefore, not made parties hereto. But this bill is filed on behalf of all holders of said bonds who may come in and contribute to the expenses of this litigation.

Your orator shows, that since the negotiation and sale of said bonds, the East Tennessee & Virginia Railroad Company was, in pursuance of law, consolidated with East Tennessee & Georgia Railroad Company, under the name and title of the East Tennessee, Virginia & Georgia Railroad Com-
215 pany. The latter corporation now owns, possesses and operates the aforesaid East Tennessee & Virginia Railroad.

And further complaining, your orator shows that the East Tennessee & Virginia Railroad Company, and its successor company, the defendant herein, have failed to comply with the provisions of the General Internal Improvement Law, above recited, for the payment of said installments of interest on your orator's bonds and on the bonds of other
216 holders in like situation, and the coupons of the bonds aforesaid are now in default and unpaid.

Your orator charges like defaults upon the coupons that have fallen due and have become payable by the East Tennessee & Virginia Railroad Company, according to the terms of the statute, on the first day of January, 1877, on the first day of July, 1877, on the first day of January, 1878, on the first

day of July, 1878, on the first day of January, 217
1879, on the first day of July, 1879, on the first day of January, 1880. The State of Tennessee is likewise in default on said coupons.

Your orator is entitled to the enforcement of the lien aforesaid, for the payment of interest on his bonds and those of other holders.

Your orator likewise shows that by virtue of his right in equity as a lien holder, and the terms of statutory mortgage above described, he is entitled to have the possession of the East Tennessee and 218
Virginia Railroad, in the State of Tennessee, secured by a receivership for the benefit of the holders of the Internal Improvement bonds aforesaid, issued to the East Tennessee & Virginia Railroad Company, and for the payment of the interest thereon. The Receiver or Receivers so to be appointed should apply the revenues of the property to the payment of the overdue interest on said bonds.

Your orator shows that during the aforesaid periods of default, the officials of the State of Ten- 219
nessee named in the sixth section of the said Act, have failed to take the action required thereby, and your orator is informed and believes that they claimed and claim to be bound by subsequent acts of the General Assembly of Tennessee, purporting to divest the liens and rights of the said bondholders. The present Comptroller of the State has been in office for several years, but has never made the report required by said Act. Your orator is also informed that the respondent claims that the afore- 220
said bondholders have no interest in the said statutory lien.

Your orator shows that he is remediless at law, and without the intervention of a Court of equity.

Wherefore, your orator prays that the priority of the said lien of the Internal Improvement bonds

221 and coupons aforesaid upon all the railroad, equipment, income, tolls, rights, privileges, property and franchises of said East Tennessee & Virginia Railroad Company within the State of Tennessee, may be established above all other claims and demands, as constituting the first and paramount incumbrance on said property and rights.

That the income of said property arising from its use in said State may be applied to the payment of interest accrued and to accrue upon the bonds
222 hereinbefore described, and as may appear by proofs before a Master to be still outstanding and unpaid. That the said property may be seized by order of this Court and placed in the hands of receivers, to be administered according to the said liens and trusts declared upon it, and to which it has been pledged and covenanted to be applied. That your orator may have such writs and orders of injunction *pendente lite* and thereafter as may be proper for the due enforcement of his rights.

223 And may it please your Honors to grant unto your orator such further or other and different relief in the premises as the nature of the case may require, and as may be consistent with equity and good conscience.

May it please your Honor to grant unto your orator writs of subpœna of the United States of America, to be directed to the said East Tennessee, Virginia & Georgia Railroad Company, and against all other persons interested in this matter and amen-
224 able to the jurisdiction of this Court, when discovered, thereby commanding them and every one of them, at a certain day, and under a certain penalty therein to be specified, personally to be and appear before your Honors in this honorable Court, and then and there to answer all and singular the premises, and to stand to, perform and abide such or-

ders and decrees therein as to your Honors shall 225
seem meet.

E. L. ANDREWS and
GEORGE HOADLY,
Solicitors and of Counsel for Complainant.

Exhibit "A."

UNITED STATES OF AMERICA.

M. No. 52. B. M 226

STATE OF TENNESSEE.

Know all men by these presents, That the State. of Tennessee acknowledges to owe to or order, one thousand dollars, lawful money of the United States, which sum the said State promises to pay in the City of New York, on the 1st day of January, 1892, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the presentation of the coupons hereto attached. For the performance of 227
all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of the General Assembly of said State, passed at its session of 1851–2.

In witness whereof, I, W. B. CAMPBELL, Governor of said State, have hereunto signed my name, and caused the same to be countersigned by the Secretary of said State, and the 228
Great Seal of said State to be hereunto affixed at Nashville, this first day of January, 1852.

W. B. CAMPBELL,
Governor.

W. B. A. RAMSEY,
Secretary of State.

$1,000. $1,000.

229 $30. $30.

THE TREASURER OF THE STATE OF TENNESSEE will pay the bearer thirty dollars, in the City of New York, on the 1st day of January, 1877, being the semi-annual interest then falling due on bond No. 52.

ARTH. B. CROZIER,
Comptroller.

$30. $30.

230

COMPLAINANTS EXHIBIT No. 5.
W. H. D. L.—Spl. Exr.

MOTHERAL.

Deposition of N. W. MOTHERAL, taken at Cleveland, Tennessee, on the 10th day of February, 1879, before a sub-committee of Investigation, composed of Senator Smith and Representative Driver.

231 Said witness being duly sworn, states:

Q. Please state your residence, your profession?

A. My residence is Cleveland, Tennessee. I am a minister of the gospel, of the Cumberland Presbyterian church.

Q. Did you know T. H. Calloway in his life-time, and did you hear a confession made by him before his death?

A. I knew him in his life-time, and he professed
232 religion under my ministry and joined my church, and expressed great dissatisfaction with his connection with the railroad, as president, stating that a man could not be a Christian and occupy his position, and declared his determination to resign his position. Mr. Calloway told of how he managed to get a certain bill through the legislature. I rather think it was the first Omnibus bill, but will not be

certain of that, it may have been the bill to turn 233
over the railroad stock to the Turnpike companies. He said he only liked one man to control it—he said he studied that man to find out his vices, and learned that it was women and whisky—he then employed a prostitute (Beckey Higgins I think was her name), to get him drunk on wine, and keep him at her house until the vote was taken the next day, which she did, and the bill was passed. He told me at another time, just before his death, and Joseph Calloway, his son, reiterated the same thing, 234
recently, that Major R. T. Wilson made a proposition in writing, to run down the stock of the road or water it and sell out to an English company, and thus cheat the stockholders out of their stock, which he said he rejected with indignation. Major Jackson did the same thing in a letter to Calloway. Mr. Calloway further told me that he had frequently employed David Nelson to assist him in getting his measure through the legislature, and that Nelson had applied to him for money, as pay for the same, 235
in a way that was offensive to said Calloway. I think he said he had given him a suit of clothes, and perhaps he had afterwards applied to him for money more than once, which made Calloway angry —as he was extorting it from him.

Q. Was Mr. Calloway in a state of sound mind when these statements were made, and up to his death?

A. Yes, sir; he was.

Q. Do you know anything of some letters touch- 236
ing these transactions, if so state all you may know about it?

A. Thos. Calloway, junior, came to me last Sunday night and told me that Mr. Jesse Gaut and Mr. Mayfield had telegraphed to him, as attorneys of the railroad, to come to Cleveland and get some letters touching those railroad propositions—saying

237 that they said his father's character was involved—and he asked my advice about the matter; I advised him to have nothing to do with it.

Q. Do you know anything of the disposition of those papers?

A. I do not. I understand that Mrs. Julia Calloway gave them to Samuel Reese, Depot Agent, and he turned them over to C. M. McGhee.

N. W. MOTHERAL.

238 ———

COMPLAINANT'S EXHIBIT NO. 6.

W. H. D. L., Spl. Exr.

GALLOWAY.

The deposition of M. C. Galloway, taken before the committee at Nashville, Feb. 7th, 1879.

The said witness being sworn deposed as follows:

Q. What is your connection with the *Memphis*
239 *Appeal* newspaper? If so, how long have you been connected with it?

A. I am now one of the editors of that paper, and have been connected with it as editor since 1870.

Q. Were you interested in it as a stockholder or otherwise before 1870?

A. I was not.

Q. Do you own stock in it now or have you since 1870?

A. Yes sir, one-half interest now.

240 Q. Was Col. Dupree, now of Texas, connected with, and interested in, the paper, in 1872 or 1873, or along about that time?

A. He was a stockholder in 1872, I think we bought him out in 1873, paying him $14,000 for his interest.

Q. You remember the Funding Act of 1873?

A. Yes, sir.

Q. Was any proposition made to you or to your 241
associates in control of the paper, to give you or your firm the prospective profits on $50,000 of Tennessee bonds, realized from an expected rise in Tennessee bonds, under the Funding Act, to get the influence of your paper in advocating its passage?

A. Never, sir.

Q. Was any proposition of this kind, or any one of like nature, character or form, made to you or your associates to secure the influence of your paper in support of that Act? 242

A. There were propositions to this effect, which after correspondence and negotiations failed.

Q. Who made these or such like propositions?

A. They were made through Col. L. J. Dupree, to the *Appeal* Publishing Company, but I know not who made them.

Q. Did you have individual propositions made to you, in this regard?

A. I did not; I had an individual correspondence on the subject, which failed. 243

Q. Col., if you have no objections, will you please state with whom you had these individual negotiations, or this individual correspondence?

A. If I am not compelled I would like not to mention the man's name. It was a private letter and I dislike to expose privatecorrespondence; the letter I wrote to the gentleman or the letter received was accidently found at the Maxwell House, and I desire to say that personally I have no objection to its publication. 244

Q. Col., if you have no objection, will you please, without giving names if you so desire, state the amount or amounts that you understood, to be offered to the *Appeal* Company, or to you individually in reference to the Funding Act?

A. Never a dollar; I never heard of a Funding ring except through the *Memphis Avalanche*; that

245 paper published an article or articles reflecting upon the integrity of Gov. Brown, and it, after or about the time before Gov. Brown retired, upon his demand for an unqualified retraction of its article or articles, did so, and published an article highly complimentary to Gov. Brown. He went to Brownsville, and sent from there a letter, by an envoy extraordinary and this brought about the retraction and a complimentary editorial as to his integrity. Kellar wrote a letter
246 disclaiming responsibility for the articles.

Q. The *Memphis Appeal* did support the Funding Act?

A. Yes, sir, it did, because Brown and his opponent during the canvass endorsed it, and Brown's triumphant election we regarded as making it the Democratic policy, and hence we supported it, and if times now were like they were then, we still think it would be the best policy for the party in the State.

247 Q. A receipt has been published or a copy of a receipt from you or the *Appeal* Company, to a certain railroad president or company, for a considerable sum of money; if you have no objection, please give the committee an explanation of it?

A. In reply to this question, I will say that pending the Gubernatorial canvass of 1870, the *Appeal* made a bitter onslaught on the bogus bonds of the State, especially the Mineral Home bonds, and the Brownlow administration. In this policy, we had
248 three objects: the first was to save the tax-paying people from the taxes imposed to pay these bogus bonds. Second, to help elect Governor Brown, and third, to injure the Republican party. This bitter war, we continued during the Gubernatorial canvass in 1870, and in 1871, after Brown's election. In September, 1871, Maj. M. J. Wicks addressed a note to me, to meet him at his bank. In response

to his invitation I repaired to his bank; there I 249
found M. J. Wicks, President of the Memphis & Charleston Railroad, and Wm. B. Greenlaw, President of the Little Rock Railroad. Maj. Wicks took from his vest pocket an editorial in regard to the liabilities of the State, and asked me who was the writer of said editorial; I informed him that I wrote it. He said that that article was worth $50,000 to his road. The legislature had passed an Act allowing the railroads to retire their indebtedness, and then I got an insight into the whole thing. Maj. 250
Wicks and W. B. Greenlaw insisted that I continue the *Appeal* on the same line of policy, and as it made hundreds of thousands of dollars for them and the other roads, they would make it to my interest. Mr. Wicks voluntarily said he would give the *Appeal* $5,000 for every depreciation of five per cent. in the bonds. With this *stimulus* the *Appeal*, made a furious attack upon the bogus bonds, and continued to depress the bonds until the *Appeal* made $10,000 under Wick's voluntary contract with 251
it, and come within a quarter per cent. of making $15,000. When payment was demanded, Wicks requested me to appear before the Directors of the Memphis & Charleston Railroad, which I did. After I got there, we had nothing in a tangible shape to present to the Board, and Wicks made out an account embracing the services of the *Appeal* and its editors under the contract. Wicks paid the account after me agreeing to deduct $2,500.

Q. What about your enthusiastic support of Gov. 252
Brown?

A. That support was prompted by two reasons: first, I regard him as one of the best and ablest Governors Tennessee ever had; and second, is that I know him, in an experience of forty years with public men, to be one of the noblest men that ever lived.

M. C. GALLAWAY.

253 COMPLAINANT'S EXHIBIT, NO. 7.
W. H. D. L., Spl. Exr.

COPY FROM CASH BOOK OF CALVIN STEVENS, DECEASED.

1873.		
Sept. 5.	By Sec. State of Tenn. Registering 84 O. Bonds, . .	$84 00
"	By Sec. State of Tenn. Funding 42 New Bonds, .	42 00
"	By Travelling expenses to Tennessee, ...	74 00
		$200 00

COMPLAINANT'S EXHIBIT NO. 8.
W. H. D. L., Spl. Exr.

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THE
CREDIT AND RESOURCES
OF THE
STATE OF TENNESSEE.

The following communication to the New York *Times*, written by the undersigned, is published in pamphlet form at the request of several former citizens of Tennessee now resident in New York. All the statistical facts given are derived from the official reports of the officers of the State.

S. WATSON,
255 *Agent for the State of Tennessee.*

TENNESSEE STATE CREDIT AND RESOURCES.

To the Editor of the New York Times:

A communication appeared in your paper of the 1st of January, from your correspondent in Nashville, signed "Philo," which does great injustice to the State of Tennessee, and requires some notice from the friends of the State.

The political part of your correspondent's letter I
256 have nothing to do with, excepting so far as it relates to emigration. "Philo" asserts that Northern men are driven away from Tennessee, and that there are not now in Tennessee one-half as many men of Northern birth as there were two years ago. That some Northern men in consequence of their disappointment in their business calculations, and some in consequence of hostility excited by their political course, have left the State may be true, but a very large number remain. They are scattered all over the State, and can be counted by thousands. The

writer of this knows that the rich iron regions below 257
Nashville, lying between the Cumberland and Tennessee River, is rapidly attracting emigration. Substantial men from the North have come there and invested their hundreds of thousands in iron property, and in iron works that have been idle during the war, and are now putting them into operation. It is also known to the writer that Northern emigration is setting in quite rapidly to the counties bordering on the Chattanooga Railroad and its branches. In three counties they have brought in with them 258
the past year capital largely exceeding $200,000. The Nashville press chronicles almost every week the arrival of parties to investigate the advantages and resources of Tennessee; notwithstanding the erroneous impressions of the State spread abroad by the political press and such correspondents as "Philo."

The bitterness of party feeling is very much softtening down in Tennesse. It is true that men who come into the State as blatant politicians, and who expect to live upon politics, do excite the enmity of 259
the political party against which they array themselves; but men who come into the State to cast their destinies with its people by accumulating wealth and developing the resources of the country, are cordially welcomed, everywhere and by everybody.

But the parts of your correspondent's letter which I wish especially to notice are his attacks upon the good faith of the State, and his efforts to ruin its credit by charging upon the State reckless extravagance in aiding railroads, most of which he deems 260
to be worthless.

"Philo" charges that the State refused, upon a technicality, to take the notes of the old State Bank. She refused to take them because she did not consider herself bound in honor and good faith to do so. An attempt was made by some of her citizens to force this depreciated currency upon her for taxes,

261 but the Supreme Court of the State, composed of men of the highest integrity and ability, unanimously decided that she was under no obligations to do so; and this decision has the sanction of the best legal minds in the State. The Bank of Tennessee is now being wound up. Its debtors can pay their debts in the notes of the bank. The policy of the State is to let as much of the circulation of the bank be redeemed in this way as possible, and after the debts are paid, if any notes remain unredeemed,
262 and if there should be even a moral obligation upon the State to redeem them, it will certainly do so. For in no State is the fidelity to obligations more deeply seated than in Tennessee. This has been proved by her past and will be proved by her future history. The word "repudiation" is an odious one to every Tennesseean. No political press and no demagogue of any political party has ever dared utter it to her people.

But the injurious charge, or insinuation rather, is
263 made by your correspondent, that the State has been guilty of reckless extravagance in aiding worthless railroads. That, in an appropriation of several millions of dollars, some roads should get aid that are not deserving, would of course be expected. But a detailed examination of railroads of Tennessee will show that there are but few if any roads of this character aided.

The Edgefield and Kentucky Railroad runs from Nashville to the Tennessee and Kentucky State line.
264 There it was expected to be united to the Henderson and Nashville Road, which runs from the point of junction through Hopkinsville and Madisonville to Hendersonville and Evansville on the Ohio River. The Kentucky Road, not having been completed before the war, and the Edgefield and Kentucky Road consequently ending in the woods, its interest has never been paid. But the Henderson and Nashville

is now in rapid progress. The road is graded from 265
the State line north to Hopkinsville, a distance of about 25 miles, and the iron rails probably laid by this time to that point. Much of the road is also graded from the Ohio River south, and a good deal of track laid.

The length of these two roads is 150 miles—fifty miles in Tennessee and one hundred in Kentucky. They run through the richest agricultural region in the West. Seventy-five miles from Nashville they strike an inexhaustible bed of rich bituminous coal. 266
There are three strata of this coal, one of them a little over six feet in thickness, and the road runs just below the lowest strata. At Evansville these roads are united to the whole system of railroads in the great Northwest, and will make almost an air line communication with Chicago, and it is but a few miles further to New York by this route than by the Louisville and Nashville Road. The aid of $300,000 given to the Edgefield and Kentucky Road will secure the immediate completion of the Kentucky end 267
of the road to the coal mines. Thus bringing these rich mines to Nashville and the whole of Middle and West Tennessee. Can there be a doubt that the future coal trade alone over the Edgefield and Kentucky Road will enable it to pay the interest on its debt to the State?

The completion of the road referred to will also greatly benefit the Memphis and Ohio, and the Memphis, Clarksville and Louisville Road. These two roads together form a line of road running from Mem- 268
phis through Clarksville in the direction of Bowling Green, Kentucky, and intersecting the Nashville and Henderson Road at the State line. One of them passes through the rich iron region lying between the Cumberland and Tennessee Rivers. The supply of coal for Memphis, Clarksville, the iron works and all intermediate points, must go over these roads,

269 thereby greatly advancing their future paying value. These roads have not heretofore, since the war, paid their interest. But so great is the confidence of the Louisville and Nashville Railroad Company in the future of these roads, that that Company, one of the wealthiest and most ably managed railroad corporations in the United States, has leased the Memphis and Ohio Road for ten years, and is now paying its interest on its debt, and has proposed to buy the Memphis, Clarksville and Louisville Road, offer-
270 ing to pay its floating debt, the back interest due the State, amounting now to $220,272, the whole of its debt to the State, and also to pay the stockholders a portion of their stock. Can any stronger evidence be given of the future paying value of these roads? The payment of their interest hereafter is certainly beyond a doubt.

One of the roads aided by the last act of the Legislature is the Nashville and Northwestern. This runs from Nashville to the Mississippi river, and has
271 its terminus on that river, in the edge of Kentucky. On the opposite side of the Mississippi, it meets the Iron Mountain Railroad, which is being built from St. Louis down the western bank of that river. An appropriation has also been made to enable the Northwestern road to build a short branch, which will connect it with the roads leading to New Orleans and Memphis. The Nashville and Northwestern road has but very recently been completed to the Mississippi, and is unprovided with rolling
272 stock, and of course could not be expected to pay its interest. The recent appropriations of the Legislature will fully equip it and build the branch referred to, and Nashville will then have by this road a very direct communication with St. Louis, the shortest and most direct communication with New Orleans, and almost an air-line route to Memphis. Ought not a road running part

of the way through a rich iron region, running 273
over the fertile soil of West Tennessee, and having
such connections, be relied on to pay at least its
interest on its debt to the State?

The Nashville and Decatur road is one of the roads aided. It crosses some very winding streams, and has an unusual number of bridges and a large amount of trestle work, all of which needs re-building. It is — miles long, and runs from Nashville to Decatur, Alabama. Means have been provided for its extension to Montgomery in Alabama. This, 274
when completed, will give Nashville almost an air-line communication over this road to Mobile and Pensacola on the Gulf of Mexico. This road has always paid its interest out of its profits, and will be still more certain to do so in the future.

The Nashville and Chattanooga road has always paid its interest and needs no aid. This road has two branches leading off from it—one, called the McMinnville and Manchester, starting about seventy-five miles from Nashville and running north- 275
wardly to McMinnville, thirty-four miles in length; the other, called the Winchester and Alabama road, starting about eighty-five miles from Nashville, running southwardly through Winchester to Fayetteville, thirty-eight miles in length. The rolling stock of these roads was run off, their depots and bridges destroyed, and all the iron rails on both roads removed elsewhere by the United States military authorities. The McMinnville and Manchester road has just been repaired, and the appropriation 276
to the Winchester and Alabama road has been made to enable it to complete its repairs. Both roads were run by the Chattanooga road before the war. The Southwestern road is to be a continuation of the McMinnville and Manchester road, north. The building of this road will be rendered unnecessary by the building of the Nashville and Pacific Railroad.

277 The Memphis and Little Rock Railroad, although out of the State, is really a Tennessee road, being built principally by Tennessee capital. This road was almost entirely destroyed by the war, and has been wholly unable to pay its interest. But it is being re-built, and contracts have been entered into for its entire completion. Can any intelligent man doubt that a road, running from the capital of the State of Arkansas to the principal commercial city of Tennessee, will pay its interest on its debt to the
278 State when it is re-built?

The Memphis and Charleston Road, although badly crippled by the war, has promptly paid its interest, and so have the Mobile and Ohio, the Mississippi Central and the Mississippi and Tennessee roads.

The East Tennessee and Georgia and the East Tennessee and Virginia roads have always paid their interest promptly, and need no aid.

The Knoxville and Kentucky road has paid its
279 interest. It runs from Knoxville through the rich coal fields of East Tennessee, and it is intended to meet at the Kentucky State line the Lebanon branch of the Louisville and Nashville Railroad. It is already completed thirty-two miles, has fifteen additional miles graded, and is supplied with rolling stock for its local traffic. The appropriation of $800,000 will certainly complete it to the State line. It has already penetrated the coal fields, and is supplying Knoxville with coal, and over this road will
280 be transported the coal to supply Macon and Augusta, and other intermediate points in Georgia. It not only opens up the rich coal fields and iron mines of East Tennessee, but on its completion will give the fertile valleys of that section of the State access to the markets of the country, both North and South. Its coal trafic alone should pay the interest on its debt.

The Knoxville and Charleston road, "Philo" as- 281
serts, owe $615,000 and runs but one mile. This is wholly untrue. This road is nearly completed sixteen miles, and when finished that distance, and equipped, will owe the State only $325,000 in all. This road is to meet a road being built from Charleston, in a direct line to Knoxville.

The Cinncinnati and Cumberland Gap Railroad is now running twenty-five miles, with its grading completed twenty miles further, at which point it meets at the North Carolina line a road now build- 282
ing from Asheville. These two latter roads, when completed, will give Knoxville and East Tennessee direct connection with the seaboard in the Southern Atlantic States, and thus render her system of railroads complete, and open up to the world her rich mineral resources, and bring the products of her rich valleys to the nearest and best markets, both North and South.

The Nashville and Pacific Railroad is another road that is to receive the aid of the State. But it 283
can receive no aid until its stockholders grade thirty miles of the road and have it ready for the iron. It then receives State aid to iron it, and upon every additional twenty miles being thus graded it is to receive the State aid to iron the twenty miles. The road is destined to run from Nashville to Knoxville, and will at some day run directly to Bristol on the Virginia and Tennessee State line, there meeting the railroads of Virginia that lead directly to Norfolk. Its completion, and this is rendered 284
certain, and the completion of the short branch of the Nashville and Northwestern Railroad before referred to, will furnish almost an air line of railroad from Norfolk in Virginia through Nashville and Memphis to Little Rock. No one can doubt that this in a few years will be extended to the Pacific, either to the Port of Guayamas, on the Gulf of

285 California, or to some point in the State of California. This route will run through the richest agricultural part of the United States, will be free from ice and snow, and the shortest route from the Atlantic to the Pacific. New York will yet see the day when her shortest and best highway to the Pacific Ocean will be through the State of Tennessee, and over her projected Nashville and Pacific road.

We have given the above detailed description of
286 the railroads in Tennessee, with her connections, so that every one may be enabled to judge of the importance of each road, and the perfection of her entire system. It must be obvious that there are very few of her roads, and those very short ones, that are not necessary to the development of her resources. When finished, Knoxville will be the centre of the system in the East, and her roads will connect her with all important points in the Union. Memphis has her system of roads leading to all parts
287 of the Mississippi Valley.

Nashville, the capital of the State, is the centre of the whole system, and her railroads, when completed, will give her close connection with all the cities of the Northwest, and make her the point through which the great highway from the Atlantic to the Pacific must pass. Has not Tennessee shown her wisdom in pledging herself to the support of such a system of roads?

At the close of the war almost all of the roads of
288 Tennessee were nearly in ruins. The State immediately came to their aid, and set them upon their feet again; and finding that additional aid was necessary to fully repair her roads and fully complete her system, she has by the recent act of her Legislature promised additional aid, that may reach the sum of about $4,000,000. But it must be years before this entire sum can be called for, a large por-

tion of this aid being dependent upon the prior 289
grading of the roads by the stockholders. The State has not acted hastily nor rashly in this legislation, but after full investigation of the claims of each road, and careful consideration of the importance of her entire system. The most enlightened of her tax payers believe her action to have been one of wise and judicious liberality, and so we believe those will think who are interested in her securities.

Prior to the war every road in Tennessee, except- 290
ing the Edgefield and Kentucky, and perhaps the Winchester and Alabama roads, paid the interest on he bonds loaned them. The receipts of all the main lines of railroads, and it is believed almost all the roads in Tennessee, are greater now than before the war.

The important question for the bondholder now is: What security have I for the payment of the principal and interest of my bond? The State debt proper is only about $4,000,000. The railroads 291
and all their rolling stock are mortgaged to the State to secure the payment of bonds loaned. This mortgage, as bondholders must know, inures to their benefit. For the payment of $29,000,000 of bonds, which will be the entire amount of bonds issued to the roads, including those that may be issued under the recent act of the Legislature, the bondholders have as security roads which, when completed, will be nearly 2,000 miles in length, and which will have cost and which will be worth fully $70,000,000. In 292
addition to that they have the whole resources of the State solemnly pledged to them. And what are the taxable resources of the State? On the 19th of December last there were due the State for taxes $1,108,900. As all the real and personal estate of the taxpayer is responsible for his taxes, a large proportion of the above amount must certainly be

372

293 paid. The present tax law, under which the taxes of 1868 will be levied, increases the tax fully fifty per cent. The receipts from all sources the past year, exclusive of interest paid by railroads, were $1,517,472. Add fifty per cent. to this will make $2,276,208. To this should also be added what may be collected from back taxes. The expenditures of the State last year, exclusive of interest, were $939,-404. Of this amount at least $344,970 were extraordinary expenses, and will not be incurred this year.
294 This would make the State expenditures this year $654,433, which, deducted from her tax receipts, $2,276,208, would leave $1,621,775, a surplus amply sufficient to make up all possible short-comings of railroads in paying their interest, and leaving also a very large amount to be appropriated to the aid of her common schools, a system which she is just inaugurating, combining the best features of the systems of the Northern States.

The pecuniary condition of the State of Tennessee
295 and its resources are but little understood. Outside of East Tennessee, and aside from the destruction of her railroads, and the loss of her slave property, Tennessee was but little injured by the war. The Federal army got possession of Middle and West Tennessee early in 1862. Her citizens were enabled to get rid of all their Confederate currency without a sacrifice. It is true a large amount of her stock of animals were taken by the armies, but the armies, as a general rule, paid for what was taken. The
296 army expenditures were larger in Tennessee than in any other State, and these expenditures enriched its citizens. The city of Nashville certainly came out of the war largely increased in population and greatly advanced in wealth. Everything was bought and sold for cash, consequently no debt was contracted at home or abroad, and as evidence of this we have no stop laws and no serious attempt to pass

any; and we appeal to the merchants of New York 297
as an evidence of the fact, that no merchants of any State pay more promptly than the merchants of Tennessee. Her black labor being formerly owned in small numbers, and many of them working side by side with their masters, labor is much less demoralized than in the more Southern States, as is demonstrated by the abundance of the present crop. Her crop of wheat the last year was fair, and farmers obtained for it from $2 to 2.50 per bushel, a price wholly unprecedented in Tennessee. Her corn crop 298
was a full one, and its surplus is now finding its way over the railways of New York to this city. Her crop of cotton has not been as large for years. Nashville has already received a larger number of bales than the average of entire years prior to this, and she will certainly receive an amount this year more than double her annual receipts before the war. Clarksville, about sixty miles below her on the Cumberland River, was one of the largest interior tobacco markets in the Union before the war; the past year 299
her receipts of tobacco in dollars and cents were greater than they have ever been at any former period.

In addition to her present productive wealth, she has vast resources yet untouched. She has valuable pine timber, larger forests of cedar than any State in the Union. She has scattered all over her every kind of timber used in building or the mechanic arts, except rosewood and mahogany. She has beneath her soil every variety of minerals used 300
in the mechanic arts, and all of it rich in quality and abundant in quantity, and she has a climate and soil capable of producing successfully every article of raw material used in manufacturing.

And yet with all these vast resources, with her sound pecuniary condition, her admirable system of railroads almost completed, and her mercantile and

301 financial honor untarnished, it is evident from the prices of her bonds, that fears exist that she will falter in paying the interest upon her debt. Why should Tennessee be distrusted? Before the close of the past year she placed her money with her fiscal agent in this city, amply sufficient to pay every dollar of her present Jannary interest.

Did she not, at the close of the war, meet the wishes of her creditors, and fund all her accumulated interest?

302 With all her business interests disorganized by the war, with her labor in its transition state from slavery to freedom, with her railroads just rising from their ruins, with an imperfect tax system, she has heretofore faithfully met her obligations.

Why should it be feared that she will falter now, when her labor is annually producing a return greater in value than at any former period in her history? When emigration is daily bringing additional labor and capital to her borders. When her
303 railroads are almost rebuilt, and daily increasing their capacity to pay their dues to the State, and when her future receipts from taxation will annually exceed her ordinary expenses largely over $1,000,000. Surely a knowledge of the condition and resources of Tennessee, the known spirit and character of her people, the well-known unalterable determination of legislators and all her State officials to maintain her public faith inviolate, ought to satisfy every one that the interest on her public debt will ever
304 be promptly paid, and that all her obligations will be honorably and faithfully fulfilled.

S. W.

RAILROADS NOW PAYING AND THAT ALWAYS HAVE PAID THEIR INTEREST. 305

	Bonds loaned, including interest funded	Bonds endorsed by the State.
East Tennessee and Virginia	$2,688,100	$197,000
Memphis and Charleston	1,643,980	
Nashville and Decatur	2,115,176	
Nashville and Chattanooga	395,000	1,546,000
East Tennessee and Georgia	1,690,120	126,000
Knoxville and Kentucky	1,353,200	306
Memphis and Ohio	2,396,110	
Mobile and Ohio	1,684,800	
Mississippi and Tennessee	317,800	
Mississippi Central	1,078,980	
Knoxville and Charleston	300,000	
	$15,663,266	

ROADS NOT NOW PAYING, BUT WHICH WILL CERTAINLY PAY, AND PROBABLY BY THE END OF THE YEAR.

Edgfield and Kentucky	$1,070,167	307
Memphis, Clarksville and Louisville	1,894,600	
Nashville and Northwestern	3,064,850	
	$6,029,617	

ROADS NOT NOW PAYING

Cincin., Cumb. Gap and Charleston	$985,680	
McMinnville and Manchester	851,360	
Winchester and Alabama	1,098,259	
Rogersville and Jefferson	393,160	
Memphis and Little Rock	105,000	350,000
	$3,433,459	308

Deposition of C. Amory Stevens.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE. 1

CALVIN AMORY STEVENS *et al.* on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

versus

The MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.* 2

Hearing pursuant to notice to take the take the deposition of Calvin A. Stevens, before William H. DeLancey, Notary Public.

(Deposition taken subject to all legal objections of either party.)

It is consented and agreed that this deposition 3 shall be taken before William H. DeLancey, as a Special Examiner of the Circuit Court of the United States for the Western District of Tennessee, and that an order to that effect be entered at a future day *nunc pro tunc*, and that the said William H. DeLancey is also acting under and by virtue of Section 863 of the Revised Statutes of the United States.

52 BROADWAY, New York, Sept. 12, 1879.

Present { MR. ANDREWS, for Complainants. 4
{ MR. HUMES, for Defendants.

5 CALVIN A. STEVENS, a witness produced on the part of the compainants, being by me first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

Direct examination by MR. ANDREWS:

1 Q. Are you the complainant in this case?

A. I am.

2 Q. Are you an owner and holder of bonds of
6 the State of Tennessee?

A. I am.

3 Q. Will you produce before this officer for his inspection and that of counsel here present, Tennessee bonds of which you are owner and holder?

A. There are 28 of the bonds issued to and sold by the Memphis & Charleston R. R. Co.

Witness produces 28 bonds of the State of Tennessee.

7 Complainants' counsel requests the Commissioner to take copies of said 28 bonds, and certify in his report the production of the same; certificate annexed, and marked "Compl'ts Exhibit No. 1, W. H. D. L. Sp'l Ex'r."

4 Q. Are the holders of this class of bonds quite numerous, and do they reside in many different places?

A. Such is the case.

8 (Complainants' counsel closes his direct examination.)

Cross-examination by MR. HUMES:

5 x Q. How did you become the owner of the 28 bonds you have here produced?

A. I could not answer whether they were given to me by my father or whether I bought them myself.

6 x Q. When did your father give you any of these bonds? 9

A. Before his death.

7 x Q. When did he die?

A. I think it was March, 1877.

8 x Q. How long before his death did he give them to you?

A. It might have been a month or two weeks—not very long before his death.

9 x Q. Did he give them to you orally or by an instrument in writing? 10

A. He gave them to me by an instrument in writlng.

10 x Q. What was that instrument in writing?

A. A proper instrument in writing, giving me these bonds as well as other securities.

11 x Q. Was it a Will, deed of gift, or simple assignment?

A. It was not a Will—it was a proper instrument in writing.

12 x Q. What do you mean by a proper instrument in writing? 11

A. I mean such a legally drawn instrument as fully transfers property from one person to another.

13 x Q. Was it signed by your father?

A. It was, otherwise it would not have been a proper instrument in writing.

14 x Q. Where is the instrument now?

A. It is securely under lock and key in this city.

15 x Q. Will you produce it during this examination? 12

A. I will with pleasure if the Court requires it.

16 x Q. Do I understand you to decline to produce it except upon an order of the Court?

A. An order of the Court or proper authority. I wish to further state that I am here to prove the ownership of my bonds, and not to answer impertinent questions unnecessarily inquiring into my pri-

13 vate affairs, enabling the defendants to further obstruct and postpone the trial of these causes.

17 x Q. Do you mean by other proper authority the direction of the examiner?

A. I will again state that I am here to prove the ownership of my bonds, and I again decline to answer impertinent questions prompted by a motive to retard and evade justice.

18 x Q. The question not being answered I repeat x Q. 17.

14 A. I decline to answer for the reasons already given.

Adjourned to 13th inst., at 10 A. M. by consent.

SEPT. 13, 1879. 10 A. M.

Adjourned to 4 P. M. this day by consent.
" " Sep. 29, 1879, 10 A. M. by consent.
" " Oct. 8, 1879, 10 A. M. "
" " Oct. 17, 1879, 10 A. M. "

15

NEW YORK, Oct 17, 1879.

Present—as before.

19 x Q. Will you produce the paper asked for on the former examination?

A. We will settle that at the next meeting.

Adjourned to October 22, 1879, at 12 M.

16 OCTOBER 22, 1879—12 M.

Present—Counsel as before.

20 x Q. Will you please produce the instrument in writing, which you have testified was signed and executed by your father a few weeks before his death, giving you his bonds of the State of Tennessee?

A. I object to producing the instrument referred 17
to, because it would make public the private affairs of an important estate confidentially intrusted to my keeping, but if the Court specially desires it I will waive my objection. I will go even further, if counsel for defendant desires to privately examine it, I will waive my objection, provided he will recipro-cate and fulfil reasonable conditions.

First. I ask that R. T. Wilson, allow my counsel to inspect his copy, letter and dispatch book, as to correspondence between himself, C. M. 18
McGhee, T. H. Callaway and Joseph A. Mabry, just before and during the Tennessee Legislature of 1869, when he was engaged in procuring the pasage of the act of 1869, as stated in his letter to John T. Terry.

Second. That he allow my counsel to inspect his correspondence with his associates in 1870, when they were procuring the passage of the act for the sale of insolvent railroads, which he suggested and aided as stated in his letter to John T. Terry. 19

Third. That he allows my counsel to inspect his correspondence with his associates during the year 1868, when to depress the market value of Tennessee bonds, they procured a speculative injunction to prevent State payment of interest, for which conspiracy against the credit of the State Governor Brownlow, had R. T. Wilson C. M. McGhee and Joseph A. Mabry arrested.

Fourth, That he allow my counsel to inspect his correspondence with his brother, B. F. Wilson, 20
and C. M. McGhee, when he (R. T. Wilson) and Gov. Porter were getting up the extra session of the Tennessee Legislature to compromise the debt at 50 and 6 per cent.

Fifth, That R. T. Wilson, President of the Memphis & Charleston Railroad Company, give the names of his brokers in New York, through

21 whom he carried on his Tennessee bond speculation.

(Objected to by defendants' counsel as impertinent, irrelevant, incompetent, and not in answer to the question.)

21 x Q. Was the forgoing answer given on advice of counsel?

A. It was given on my own suggestion; I wrote it out myself.

22 22 x Q. Was it also given on advice of counsel?

A. I submitted it, counsel thought it proper, since R. T. Wilson refused again and again to produce evidence that counsel properly called for.

23 x Q. Did you sign the paper shown you dated February 15th, 1877, addressed to his Excellency, James D. Porter, and signed, among others, as follows:

"Calvin Stevens, by C. Amory Stevens, atty.,"

23 and a copy of which paper is attached as Respondent's Exhibt No. 1 to Peter Geddes' deposition in these causes?

A. I did sign it, at the solicitation I think of Mr. Peter Geddes.

24 x Q. Did you write and forward the letter now shown you, dated New York, December 15th, 1877, addressed to Governor James D. Porter, Nashville. Tennessee?

A. Soon after R. T. Wilson wrote and forwarded

24 a certain dispatch to Governor Porter, to which he secured from me the signature of my father's estate I wrote and forwarded the letter referred to, copy of which I offer from R. T. Wilson's copy book.

(The copy referred to is offered in evidence and marked Resp'ts Exhibit No. 1, W. H. D. L., Spl. Exr.)

25 x Q. What was the date of the telegram signed by you, and, as you say, sent by Wilson? 25

A. I should say a few days before, and I offer a copy of it taken from R. T. Wilson's dispatch book. It is the same telegram that to oblige R. T. Wilson I purposely signed the estate of Calvin Stevens, C. Amory Stevens, trustee. I was on the point of signing my own individual name, when I was urged by R. T. Wilson & Co. to sign the name of the estate, since it would carry more weight, and since it represented the same lot of bonds that my father 26 owned February 15th, 1877; these were the reasons given me by R. T. Wilson & Co.

(Copy referred to offered in evidence, and marked Resp'ts Exhibit No. 2, W. H. D. L., Spl. Exr.)

26 x Q. How old were you in December, 1877?

A. I was born August 2, 1845.

27 x Q. Were you the representative of Calvin 27 Stevens' estate when you signed the above telegram?

A. I was.

28 x Q. Didn't you also send a telegram on the 14th of December, 1877, to Governor Porter?

A. I think likely that I did. R. T. Wilson urged me to telegraph, and also to see my friends and get every one I could to telegraph.

29 x Q. Do you state that the telegram of the 14th of December was suggested or dictated by R. T. 28 Wilson, or written by him, or by anyone in his office?

A. I refer to the first telegram which he wrote and sent, and urged me to get others to telegraph and to use what influence I had to help them get through the 50 and 6 per cent. bill.

30 x Q. Who wrote and sentthe telegram of the

29 14th December, signed by you, to Governor Porter?

A. Please produce it that I may refresh my memory and tell all I know about it.

(Counsel says he has not got it.)

31 x Q. Did you write the letter of December 15th, 1877, as containing your views and sentiments, and do they contain your views and sentiments at that time?

30 A. I did write that letter, subject to R. T. Wilson's approval and sanction. R. T. Wilson was very careful to have the letter read to him before it was sent, and expressed himself as much pleased with it.

32 x Q. When did your father purchase the bonds he gave to you?

A. A number of years before his death.

33 x Q. Did he not purchase a large number of them during the years 1874, 1875, 1876 and 1877, up

31 to March?

A. I think he may have purchased some of them as recently as 1874, but my impression is they were purchased some time before.

34 x Q. Did he not make large purchases of bonds in 1875 and 1876 and in 1877?

A. I do not think he purchased any State of Tennessee bonds in the years 1875, 1876 or 1877. I think they were purchased long before that.

35 x Q. Were you on such terms with your father

32 in relation to his business for several years before his death, as to be informed of his transactions in bonds, and did he communicate with you on this subject?

A. I was quite familiar with my father's business affairs; we usually consulted together on all important business transactions when I was at home and with him.

36 x Q. Did your father fund the past due coupons, and bonds under the act of 1873, and if yea, did he do it in person, or by an agent? 33

A. I was not at home at the time, but I understand that he took his Tennessee bonds in person to Tennessee, had all of his bonds registered, cut off the past due coupons of the same and funded them into the new series of funding bonds.

37 x Q. Did you purchase and own Tennessee bonds yourself, before your father's death, if so in what years did you purchase them? 34

A. I purchased and owned Tennessee bonds a number of years before my father's death. I bought them at several different times, and I do not recollect the dates.

38 x Q. Did you fund the past due coupons under the act of 1873?

A. I never registered any Tennessee bonds or funded any Tennessee coupons.

39 x Q. Did you buy or hold any Tennessee bonds during the years 1873 or 1874? 35

A. I could not say for a certainty, but I am of the impression that I purchased some as recently as that.

40 x Q. Have you purchased any since 1874; if so during what years?

A. I have purchased a good many since. I think I must have purchased as late as 1876, 1877 and 1878.

41 x Q. Are the bonds proved and sued on in these cases bonds given to you by your father, or such as you have purchased since his death? 36

A. The bonds sued on in these cases include no bonds given me by my father; but bonds I purchased and paid for myself since 1874.

42 x Q. Were you aware that the railroad companies from 1870 to 1877, were purchasing State

bonds to retire their debts due to the State, under the provisions of the acts of 1869 and of 1870?

A. I was not. I first became aware of these so-called substitutions after the telegraph and letter to Governor Porter, of December 14th, 1877, had been sent.

43 x Q. Were you in the State of Tennessee during the years 1868, 1869 or 1870?

A. I could not say whether I travelled through the State in those years or not; that is without re-
38 ferring to my diary.

44 x Q. Were you at Nashville during the sessions of the Legislature in 1868, 1869 and 1870?

A. I have no recollection of ever visiting Nashville during my life.

45 x Q. Did you hold in 1873 any old Tennessee bonds with unpaid coupons attached to them?

A. I could not answer that question without referring to my books.

46 x Q. Did you ever present a coupon overdue
39 to any railroad company, and demand payment of the same?

A. I have not as yet; I was on the point of doing so, and my counsel assured me that it was not necessary.

47 x Q. When was that?

A. That was since I filed these bills.

48 x Q. Did you ever do it before you filed these bills?

A. No, sir; I did not.

40 49 x Q. Have you a list of all the Tennessee bonds you now own; if yea, will you please file it?

A. I have a list; I decline to unnecessarily make public my private affairs; I have already submitted the necessary bonds to defendant's counsel.

50 x Q. Have you shown me any bonds except those that you say are sued on?

A. No, sir; I have not.

51 x Q. What agreements besides that contained 41
in the Exhibits to Terry's and Geddes' depositions, have you entered into with other persons for the prosecution of this suit?

A. Do you refer to the amount of fees I have paid to different counsel?

52 x Q. Question repeated.

A. If counsel for defendant will explain what he means, I will be pleased to answer his question.

53 x Q. I mean have you entered into any agree- 42
ment or agreements with any person or persons, besides those Exhibited with Terry's and Geddes' depositions, for the prosecution of these suits; whether these agreements have been made with your counsel, or with others?

A. I have not entered into any such agreement, though I regnlarly pay my counsel, and expect to as long as the fight continues.

54 x Q. Have you entered into an agreement with Peter Geddes and others other than that evi- 43
denced by Exhibits to Geddes' deposition, for the prosecution of these suits?

A. I have already answered to the effect that I have not, and that I regularly pay my counsel.

55 x Q. Have you entered into any agreement with any person or persons to share in the profits arising from these suits?

A. Counsel for defendants will please explain what he means by profits; I have already expended many thousand dollars myself without receiving any profit; I am working to collect what honestly be- 44
longs to me, and to bring an infamous railroad ring to justice.

(Counsel for defendants objects to the last clause of this answer as impertinent, irrelevant, and not in answer to the interrogatory.)

56 x Q. Have you entered into any agreement

45 with any person or persons, whereby you are to get any part or share in the proceeds of the recovery of these suits, beyond the amount of your own bonds and coupons, held by you, before the bringing of these suits?

A. I have not.

57 x Q. Have you entered into any such agreement whereby others than yourself are to get a part of the proceeds of these suits, other than the bonds and coupons they held at the time of the bringing
46 of these suits?

A. I have not.

Cross examination closed.

Re-direct examination by Mr. ANDREWS:

58 Q. At the time you wrote the communications to the public officers of the State of Tennessee, referred to in the cross-examination, were you not very largely interested in non-lien bonds of the State of Tennessee?

A. I was.

47 CALVIN AMORY STEVENS.

Adjourned to Oct. 23d, 1879, at 11 o'clock A. M.

Oct. 23, 1879.

Adjourned till further notice.

Dec. 29.

Noticed for 31 Dec., 12 M.

Dec. 31.

Adjourned to January 2, 1880, 1 P. M.

Jan. 2, 1880.

CALVIN AMORY STEVENS.

Subscribed and sworn to before me this
48 2d day of January, A. D., 1880.

WILLIAM H. DELANCEY,

Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the City of New York, do

hereby certify, that on the several days named in 49
the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the City of New York, by the counsel and witness aforesaid. That the said witness was duly sworn in the above-entitled suit, and examined, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence; and that the exhibits hereto annexed, marked "Complainant's Exhibit No. 1, W. H. D. L., Spl. Exr.," and "Respondent's Exhibits Nos. 1 and 2, W. H. D. L., 50
Spl. Ex.," were introduced in evidence in said cause during the taking of said deposition.

Dated January 2, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

IN THE CASE OF

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY, 51

versus

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

52

IN THE UNITED STATES CIRCUIT COURT

For the Western District of Tennessee.

I hereby certify that there were produced before me during the taking of the deposition of Calvin Amory Stevens in this cause twenty-eight Tennessee bonds, each bond being for the principal sum of one thousand dollars, and bearing the impression of

53 the great seal of the State of Tennessee on the face thereof.

A true and exact copy of one of said bonds is as follows:

COMPLAINANT'S EXHIBIT No. 1.

W.H.D.L., Spl. Exr.

M. UNITED STATES OF AMERICA. M.

No. 357. B.

54

STATE OF TENNESSEE.

Know all men by these presents, that the State of Tennessee acknowledges to owe to

or order, one thousand dollars, lawful money of the United States, which sum the said State promises to pay, in the City of New York, on the 1st day of January, 1892, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the presentation
55 of the coupons thereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of the General Assembly of said State, passed at its Session of 1851-2.

In witness whereof, I, W. B. Campbell, Governor of said State, have hereunto signed my name, and caused the same to be countersigned by the
56 Secretary of said State, and the great seal of said State to be hereto affixed, at Nashville, this 1st day of January, 1852.

W. B. CAMPBELL,
Governor.

W. B. A. RANNEY,
Secretary of State.

$1,000. $1,000. 57

The other twenty-seven of said bonds are of like tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows: 386, 409, 501, 562, 597, 608, 612, 663, 698, 708, 1,675, 1,700, 1,705, 2,021, 2,024, 2,053, 2,054, 2,066, 2,080, 2,082, 2,085, 3,098, 3,416, 3,509, 3,525, 4,552, 4,563.

All of said bonds are dated on the 1st day of January, 1852, except numbers 1,675, 1,700, 1,705, 58
2,021, 2,024, 2,053, 2,054, 2,066, 2,080, 2,082, 2,085, 3,098, which are dated January 1, 1855, and numbers 3,416, 3,509, 3,525, 4,552, 4,563, which are dated January 1, 1856.

Numbers 357, 386, 409, 501, 562, 597, 608, 612, 663, 698, 708 are signed: W. B. Campbell, Governor; W. B. A. Ranney, Secretary of State.

Numbers 1,675, 1,700, 1,705, 2,021, 2,024, 2,053, 59
2,054, 2,066, 2,080, 2,082, 2,085, 3,098, are signed: Andrew Johnson, Governor; W. B. A. Ranney, Secretary of State.

Numbers 3,416, 3,509, 3,525, 4,552, 4,563, are signed: Andrew Johnson, Governor; F. N. W. Burton, Secretary of State.

All of Said bonds having thirty-three coupons attached to each bond, except number 2,085, which has twenty-eight coupons attached. 60

The first coupon falling due is in all respects, except as hereinafter stated, similar and like unto the following true and exact copy thereof:

$30. $30.

The Treasurer of the State of Tennessee will pay the bearer Thirty Dollars, in the City of New York,

61 on the first day of January, 1876, being the semi-annual interest then falling due on bond No. 357.

ARTH. R. CROZIER, Comptroller.

All the coupons attached to bonds numbered as aforesaid, are signed Arth. R. Crozier, Comptroller, except numbers 3,416, 3,509, 3,525, 4,552, 4,563, which are signed by J. C. Luttrell, Comptroller.

There are eight overdue coupons upon each of the aforenumbered bonds, except No. 2,085, the first
62 coupon thereof having fallen due on the 1st day of January, 1876. The other seven of said coupons fall due at intervals of six months from the date of the coupon above mentioned. On bond number 2,085 there are three overdue coupons, the first having fallen due on the first day of July, 1878, and the other two fell due at intervals of six months from that date.

All the aforesaid bonds, with the coupons attached thereto, were left by the witness, Calvin Amory
63 Stevens, for inspection by me, and the solicitor for the respondents, then and there present, and were inspected by me and by him.

The endorsements on said bonds are as follows:

On bond No. 357: "Registered under 9th section of the Funding Act, approved March 17, 1873; Jno. C. Burch, Comptroller; Chas. N. Gibbs, Secretary of State." Audited Aug. 14, 1874.

On bond No.	386	same	"	April 10, 1874.
64 "	409	"	"	May 20, 1874.
"	501	"	"	April 23, 1874.
"	562	"	"	Nov. 19, 1873.
"	597	"	"	April 10, 1874.
"	608	"	"	Nov. 20, 1873.
"	612	"	"	Nov. 28, 1873.
"	663	"	"	Nov. 2, 1874.
"	698	"	"	Aug. 14, "

On Bond No.	708	same	Audited	April 10, 1874.	65
"	1,675	"	"	Jan. 12, "	
"	1,700	"	"	Jan. 15, "	
"	1,705	"	"	Mar. 18, "	
"	2,021	"	"	Nov. 2, "	
"	2,024	"	"	June 6, "	
"	2,053	"	"	April 10, "	
"	2,054	"	"	" "	
"	2,066	"	"	Mar. 6, "	
"	2,080	"	"	Nov. 2, "	
"	2,082	"	"	June 24, "	66
"	2,085	"	"	June 2, "	
"	3,098	"	"	Mar. 6, "	
"	3,416	"	"	Jan. 6, "	
"	3,509	"	"	May 1, "	
"	3,525	"	"	June 9, "	
"	4,552	"	"	Nov. 2, "	
"	4,563	"	"	April 10, "	

In addition to the foregoing, the following endorsements are upon bonds Nos. 608 and 612: 67

"State of Wisconsin—The within bond has been assigned to to the State Treasurer as banking security.—Bank Comptroller's office, June 2, 1857. Wm. M. Dennis, Comptroller."

MADISON, July 1, 1861.

Released without recourse in any event to
SAM'L D. HASTINGS,
State Treasurer, Wis.

Witness—Adolph J. Cramer. 68
O. G. Scofield.

STATE OF WISCONSIN }
County of Dane, } ss.:

On the 1st day of July, A. D. 1861, personally appeared before me the above-named Sam'l D. Hastings, Treasurer State of Wis., to me known,

69 and acknowledged the execution of the above release to be his free act and deed.

O. G. SCOFIELD,
Notary Pubilc,
Wis.

And on bond No. 357:

"Assigned and transferred by E. Cramer to the State Treasurer of the State of Wisconsin, in trust for the 'State Bank of Wisconsin.'"

70 Madison, April 14, 1853.

J. S. BAKER,
Bank Compt'r.

MADISON, Dec. 19, 1860.

"Released with recourse in any event to
SAM'L D. HASTINGS,
State Treasurer, Wis.

And on bond No. 501:

71 Assigned, &c., as above, and endorsed,
CHAS. J. KEELIN,
State Treasurer.
by CARL HARBICH,
Asst. State Treasurer.

WILLIAM H. DE LANCEY,
Special Examiner.

72

RESPONDENT'S EXHIBIT No. 1. 73

W. H. D. L., Spl. Exr.

NEW YORK, Dec. 15, '77.

GOV. JAS. D. PORTER, Nashville, Tenn.

Dear Sir:—I telegraphed you Dec. 11th, and again to-day. I feel it my duty to further say: That while I fully recognize and sympathise with the financial distress of Tenn., yet I cannot entirely disregard my own embarrassment and that of my fellow bondholders. 74

I represent one of the many estates which purchased Tenn. bonds at a time when her credit stood high, and none feared that she would do aught to lower it. We now offer liberally to share half of the loss. Speaking for one (and I believe that I express the sentiment of the majority) I cannot discount my just claim at better than 50 and 6 per cent. (fifty per cent. of old bonds and interest due changeable for new bonds bearing six per cent. interest) nor can I yet believe that the Legislature of 75 Tenn. will force her creditors (who have offered so liberally) to take less.

Allow me to call your attention to a fact of which you may not be aware. John T. McKinnon speaks for (if he has not already overstepped his instructions) a self-appointed syndicate. It is well-known that the syndicate own few, if any, of the bonds. They do not represent the bondholders. In fact the bondholders denounce their interference and mercenary motives. This self-constituted syndicate 76 does not seek only to improve and promote the best interests of the South. Its sympathy would seem to be quite as much with itself. With a subscribed capital of only ten thousand dollars, it aims to increase it by levying a regular broker's commission on the already over-burdened bondholders.

As a sovereign State your unfortunate creditors

77 appeal to you to act as becomes your dignified position—to deal directly with bondholders, to treat as discreditable impertinence, this interference of a self-appointed syndicate, that speaks without the authority of your creditors, and whose misrepresentations and mercenary motives they generally denounce.

Very respectfully,

THE ESTATE OF CALVIN STEVENS,

C. AMORY STEVENS, *Trustee.*

78 Care of

H. T. MORGAN & Co.,

35 William St., New York.

RESPONDENT'S EXHIBIT No. 2.

W. H. D. L., Spl. Exr.

December 11, 1877.

GOVERNOR JAS. D. PORTER, Nashville, Tennessee:

I am a large holder of Tennessee bonds, which have been held for years strictly for investment

79 account. I was a signer of the former petition sent you through the Committee of Arbitration, and while I would prefer to have that proposition accepted, yet if it would require a revenue bill that is deemed by the Legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and hereby do change it. I propose to take fifty cents on the dollar.

I think this dispatch represents the sentiment of

80 most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the Legislature, through your Excellancy, to reciprocate this feeling, and make a settlement without further delay. Please submit this to the Legislature for its action.

The Estate of Calvin Stevens.

C. AMORY STEVENS, *Trustee.*

Deposition of Eugene Kelly.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE. 1

CALVIN AMORY STEVENS, *et al.*, on behalf of the holders of Intern Improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

vs. 2

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, *et al.*

Testimony and proofs for final hearing on the part of the complainants, taken before William H. DeLancey, Special Examiner, duly appointed herein, under and pursuant to the 67th Rule in Equity, as amended. 3

52 Broadway, New York,
October 10, A. D. 1879.

Met pursuant to notice.

Present—MR. ANDREWS for complainants, MR. HUMES for Respondents.

EUGENE KELLY, a witness produced on the part of the complainants, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says : 4

5 (Deposition taken subject to all legal objections of both parties.)

Direct-examination by MR. ANDREWS:

1 Q. Are you one of the complainants in these causes?

A. I believe I am.

2 Q. Are you an owner and holder of Tennessee bonds.

A. Yes, sir.

6 3 Q. Will you produce before the examiner Tennessee bonds of which you are the owner and holder for his inspection, and that of respondent's counsel, here present?

A. Yes, sir.

(Witness produces 21 bonds of the State of Tennessee, issued to and sold by the East Tennessee & Virginia Railroad Co.

Also nine bonds of the State of Tennessee, issued to and sold by the East Tennessee &
7 Georgia Railroad Co.

Also three bonds of the State of Tennessee, issued to and sold by the Nashville & Chattanooga Railroad Co.

Also 16 bonds of the State of Tennessee, issued to and sold by the Memphis & Charleston Railroad Co.)

(Certified copies of these last are hereto annexed, marked Compl't's Exhibit No. 1,
8 W. H. D. L., Spl. Exr.)

(Certified copies of receipts given by the several railroads to the State for bonds are offered in evidence and filed separately, under a stipulation of counsel, as Complainant's Exhibits.)

Direct examination closed.

Adjourned to Oct. 14, 1879, 2 P. M.

Cross-examination by MR. HUMES:

4 x Q. How long have you owned the bonds you have here produced in evidence?

A. Can't tell very well. I have owned some of them since 1859—1857-8 or '59 I think the oldest. I bought I don't know how many—probably fifty—within the last two years. I have over three hundred bonds altogether. I don't know whether these are among the fifty or not, probably some of them are. I have been trying to get the old bonds when I bought.

5 x Q. The bonds you have purchased during the last two years were bought how?

A. They were bought at the Stock Exchange.

6 x Q. When you made these purchases at the Stock Exchange did you make them in person or through a broker?

A. Through a broker.

7 x Q. Did you instruct him by by oral orders or written?

A. By oral orders.

8 x Q. What were those oral orders, as well as you can recollect?

A. To buy old Tennessee bonds.

9 x Q. Did you know what were the numbers of the bonds, or for what purpose they were issued until after the broker delivered them to you?

A. I bought them with the intention of buying bonds that were liens on railroads. I knew very well that if he bought old Tennessee bonds he would buy bonds that were liens on the roads. I told him to buy bonds issued under the act of 1851-2, because I was always told that that was the act that made the bonds liens. I did not know the numbers till I got them.

10 x Q. Who were the brokers that bought the fifty bonds or so for you during the last two years?

A. Mr. Lawrence, our broker, bought some, and a Mr. Ketchum bought some.

11 x Q. Are these gentlemen brokers in the city now?

A. Yes, sir.

12 x Q. Do I understand you, Mr. Kelly, to say that you gave your brokers any further instructions than simply to buy old Tennessee bonds?

A. That was all. I may have named the price.

13 x Q. As to the bonds bought by you more than two or three years ago, did you or not buy them also through brokers?

A. Some of them.

14 x Q. Did not the State of Tennessee default in the payment of the interest coupons attached to the old bonds owned by you during the war?

A. It did.

15 x Q. Did you ever present or claim payment of any of said coupons from a railroad?

A. Never; that is, no formal demand until this suit.

16 x Q. Did you not fund these coupons and register the bonds under the funding act of 1873?

A. I paid the charge exacted by some Tennessee official for having the bonds registered and the coupons funded into new bonds.

17 x Q. Have you not entered into a contract with Calvin Amory Stevens and others embodying the terms on which these suits are to be prosecuted?

A. I never had any contract with Mr. Stevens personally.

18 x Q. Have you made such a contract with other persons?

A. I agreed to pay my share of the expenses with other parties.

19 x Q. Is that contract in writing?

A. I will see, and answer to-morrow.

(Two papers produced and marked Respts Exhibits 1 and 2.—W. H. D. L., Spl. Exr.) 17

20 x Q. Did you sign a paper with E. D. Morgan & Co., Geddes, and others, to Gov. Porter, asking him to call a special session of the Legislature?

A. I did not; but I went to Nashville during the recent session of the Legislature to effect a compromise with the State.

21 x Q. Please produce and file a list of the bonds of Tennessee you own, as well as those you have proved as those you have not? 18

A. I will see my counsel in relation to it, and I will produce and file it.

(List produced, marked Respt.'s Exhibit No. 3.—W. H. D. L., Spl. Exr.)

22 x Q. Did you not know while the Tennessee roads were buying up the Tennessee State bonds to settle their debt with the State under the acts of 1869 and of 1870, that they were so buying? 19

A. I did not know.

23 x 2. Did you not have some of the new substitution bonds of any of the companies offered to you?

A Not to my knowledge; and I never bought one.

EUGENE KELLY.

Subscribed and sworn before me, this 14th day of October, 1879. 20

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the

above-entitled suit in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly sworn in the above-entitled suit, and examined, and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence; and that Exhibits hereto annexed, marked Complt.'s Exhibit No. 1, and Respt.'s Exhibits Nos. 1, 2 and 3, were introduced in evidence in said cause during the taking of said deposition.

Dated Nov. 25th, 1879.

WILLIAM H. DELANCEY,
Special Examiner.

IN THE CASE OF

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

versus

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

IN THE UNITED STATES CIRCUIT COURT

For the Western District of Tennessee.

I hereby certify that there were produced before me during the taking of the deposition of Eugene

Kelly in this cause sixteen (16) Tennessee bonds, 25
each bond being for the principal sum of one thousand dollars and bearing the impression of the great seal of the State of Tennessee on the face thereof.

A true and exact copy of one of said bonds is as follows:

COMPLAINANT'S EXHIBIT No. 1. 26

W. H. D. L., Spl. Exr.

M. UNITED STATES OF AMERICA. M.

No. 326. B.

STATE OF TENNESSEE.

Know all men by these presents, that the State of Tennessee acknowledges to owe to
or order, one thousand dollars, lawful money of the 27
United States, which sum the said State promises to pay in the City of New York, on the 1st day of January, 1892, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the presentation of the coupons thereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of the General Assembly of said State, passed at its ses- 28
sion of 1851–2.

In witness whereof, I, W. B. Campbell, Governor of said State, have hereunto signed my name and caused the same to be countersigned by the Secretary of said State, and the great seal of said State to be here-

to affixed, at Nashville, this 1st day of January, 1852.

W. B. CAMPBELL,
Governor.

W. B. A. RANNEY,
Secretary of State.

$1,000. $1,000.

The other fifteen (15) of said bonds are of like tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows: 333, 429, 526, 529, 530, 607, 658, are dated on the 1st day of January, 1852; No. 1,575 is dated on the 1st day of January, 1855; Nos. 3,422, 4,427, 4,436, 4,495, 4,517, 4,569, 4,574, are dated on the 1st day of January, 1856.

Nos. 333, 429, 526, 529, 530, 607, 658, are signed: W. B. Campbell, Governor; W. B. A. Ranney, Secretary of State.

No. 1,575 is signed: Andrew Johnson, Governor; W. B. A. Ranney, Secretary of State.

Nos. 3,422, 4,427, 4,436, 4,495, 4,515, 4,569, 4,574, are signed: Andrew Johnson, Governor; F. N. W. Burton, Secretary of State.

Said bonds having thirty (30) coupons attached to Nos. 326, 333, 607, 4,436, 4,495, 4,517; thirty-three (33) coupons, attached to Nos. 429, 526, 529, 530, 658, 1,575, 3,422, 4,569, 4,574, and thirty-two (32) coupons attached to No. 4,427.

The last coupon attached to each of said bonds, being the coupon first falling due, is in all respects, except as hereinafter stated, similar and like unto the following true and exact copy thereof:

$30. $30.

The Treasurer of the State of Tennessee will pay the bearer Thirty dollars, in the City of New York,

on the first day of July, 1877, being the semi-annua 33
interest then falling due on bond No. 326.

Arth. R. Crozier, Comptroller.

All the coupons attached to bonds numbered 326, 333, 429, 526, 529, 530, 607, 658, 1,575 are signed

Arth. R. Crozier, Comptroller.

All the coupons attached to Nos. 3,422, 4,427, 4,436, 4,495, 4,517, 4,569, 4,574, are signed

J. C. Luttrell, Comptroller.

There are five (5) overdue coupons upon each of 34
the following numbered bonds, viz : Bond No. 326, 333, 607, 4,436, 4,495, 4,517.

The last coupon thereof having fallen due on the 1st day of July, 1877. The other four of said coupons fall due at intervals of six months from the date of the coupon above-mentioned.

There are eight (8) overdue coupons upon each of the following numbered bonds, viz : Bonds No. 429, 526, 529, 530, 658, 1,575, 3,422, 4,569, 4,574—the last coupon thereof having fallen due on 1st day of 35
January, 1876. The other seven (7) of said coupons fall due at intervals of six months from the date of the coupons above-mentioned.

There are seven (7) overdue coupons upon Bond No. 4,427, the last coupon thereof having fallen due on the 1st day of July, 1876, the other six (6) of said coupons fall due at intervals of six months from the date of the coupon above-mentioned.

All the aforesaid bonds with the coupons attached thereto, were left by the witness, Eugene Kelly, for 36
inspection by me, and the solicitor for the respondents then and there present, and were inspected by me and by him.

The endorsements on said bonds are as follows : on Bond No. 326, "Registered under 9th section of Funding Act, approved March 17, 1873. Jno. C. Burch, Comptroller ; Chas. N. Gibbs, Secretary of State."

37				Audited	Dec. 16, 1873.
	On Bond No.	333	same	"	" " "
	"	429	"	"	June 2, 1874.
	"	526	"	"	" " "
	"	529	"	"	" " "
	"	530	"	"	" " "
	"	607	"	"	Dec. 16, 1873.
	"	658	"	"	Aug. 18, 1874.
	"	1575	"	"	Sept. 8, 1873.
	"	3422	"	"	" " "
38	"	4427	"	"	Aug. 14, 1874.
	"	4436	"	"	Dec. 16, 1873.
	"	4495	"	"	" " "
	"	4517	"	"	" " "
	"	4569	"	"	Feb. 20, 1874.
	"	4574	"	"	Aug. 7, 1873.

On Bond No. 607.

"State of Wisconsin. The within bond has been assigned to the
39 State Treasurer as Banking Security. Bank Comptroller's office, Madison, Jun 2, 1857."

WM. W. DENNIS,
Bank Comptroller.

"Madison, July 1, 1861. Released without recourse in any event to

SAML. D. HASTINGS,
State Treas'r Wis.

40

Witness:
ADOLPH J. CRAMER,
O. G. SCOFIELD.

STATE OF WISCONSIN, } ss.:
County of Dane.

On the 1st day of July, A. D. 1861, personally appeared before

me the above-named Saml. D. Hastings, Treasurer of the State of Wis., to me known, and acknowledged the execution of the above release to be his free act and deed. 41

[L.S.] O. G. SCOFIELD,
Notary Public,
Wis.

On Bond No. 526, } Assigned and transferred by E.
On Bond No. 529, } Cramer to the State Treasurer 42
On Bond No. 530, } of the State of Wisconsin, in trust for the State Bank of Wisconsin. Madison, April 14, 1853.

J. S. BAKER,
Bank Comptroller.

"CHAS. KUEHN,
State Treasurer.

By CARL HABICH,
Asst. State Treas'r." 43

On Bond No. 326, } Assigned and transferred as
On Bond No. 333, } above.

E. H. JANSON,
State Treasurer.

By D. A. SEAVER,
Asst. Treasurer.

Madison, July 1, 1861.
Released without recourse in any event to 44

SAMUEL D. HASTINGS,
State Treasurer Wis.

Witness:
ADOLPH J. CRAMER, }
C. H. PURPLE. }

45 "STATE OF WISCONSIN, } ss.:
County of Dane. }

On the 1st day of July, A. D. 1861, personally appeared before me the above-named Saml. D. Hastings, Treasurer of the State of Wisconsin, to me known, and acknowledged the execution of the above release to be his free act
46 and deed.

O. G. SCOFIELD,
[L.S.] *Notary Public*,
Wis.

RESPONDENT'S EXHIBIT No. 1,
W. H. D. L.,—Spl. Exr.

47 *To* THE COMMITTEE OF TENNESSEE BONDHOLDERS:

I hereby assent to the plan and conditions of the committee's circular of May 17th, 1879.

LIST OF BONDS.

COLOR.	LETTER.	NUMBERS.

48

RESPONDENT'S EXHIBIT NO. 2.—W. H. D. L., Sp'l. Ex'r. 49

OFFICE OF COMMITTEE OF
TENNESSEE BONDHOLDERS,
No. 31 Nassau Street.

P. O. Box 936. NEW YORK, May 17, 1879.

To the Holders of Tennessee Bonds:

In our last circular we informed you that the committee was considering the best means for enforcing our first mortgage liens against the railroads in Ten- 50
nessee. After full deliberation, with advice of counsel, and with the approval of the following prominent houses interested: Brown Brothers & Co., Maitland, Phelps & Co., Ward, Campbell & Co.; and of the Presidents of the Seaman's Savings Bank, and the Globe Mutual Life Insurance Co. of New York; and of large individual holders in New York, Baltimore, Philadelphia and Chicago, we have decided to adopt the suits lately instituted by Mr. C. Amory Stevens. Prompt action on the part 51
of the bondholders will enable us to bring these suits to trial during the ensuing summer.

It may be well for us to give some of the considerations that make us confident of a successful enforcement of the lien conferred on our bonds by the distinct language of the Tennessee Statutes. While Tennessee bonds of the new issue were being offered for sale in behalf of the railroads of the State, S. Watson, "agent for the State of Tennessee," addressed the following argument to the pub- 52
lic, which was printed in pamphlet form in 1868:

"The important question for the bondholder now "is, What security have I for the payment of the "principal and interest of my bond? The State "debt proper is only about four millions. The "railroads and all their rolling stock are mortgaged "to the State to secure the *payment of bonds*

53 " *loaned.* This mortgage, as bondholders must
" know, enures to their benefit. For the payment
" of twenty-nine million bonds, which will be the
" entire amount of bonds issued to the roads, in-
" cluding those that may be issued under the recent
" Act of the Legislature, *the bondholders have*
" *as security* roads which, when completed, will be
" nearly two thousand miles in length, and which
" will be worth fully seventy million dollars. In
" addition to that, they have the whole resources
54 " of the State solemnly pledged to them."

Again, in 1868, when the Legislature of Tennessee sought to impair our securities, Gov. Brownlow, then chief executive, sent a message to that body remonstrating against the proposed measures in the following emphatic language:

" The State, in point of honor and fact, holds the
" lien in a fiduciary capacity. She holds it *in trust*
" for the benefit of the bondholders. She honor-
" ably has no right to abandon it or surrender it to
55 " the companies. She ought not to prove faithless
" in this *trust*, but maintain and execute it as the
" bondholders understood it and as the people of
" the State understood it. The bondholders are in-
" terested in these resources to pay the bonds they
" hold, and the people are interested in them to see
" that they are not to be taxed to pay interest or
" principal of bonds for which the railroads are
" pledged by the terms of the law."

The assurance of our rightful legal claims against
56 the railroads is strongly fortified by the following facts:

In April, 1878, the committee addressed a circular to the bondholders notifying them that it was about to enforce this lien. We petitioned to be heard in the Mobile and Ohio case then pending on appeal before the Supreme Court of the United States. In that suit the question whether or not

the holders of Tennessee bonds had a first mortgage 57
lien upon railroads in that State, was clearly presented. The cause was fully argued by several counsel for the railroad company as well as by our counsel, and the Court took the case under advisement. Some time after, while we were confidently awaiting a decision in our favor, we were surprised to learn that the railroad company had settled the case with the party to the record in that suit—that stipulations had been filed in the office of the Clerk of the Supreme Court—that copies had been sent to 58
the several Judges of the Supreme Court—and, in short, that everything had been done by the railroad officials which it was possible to do to forestall a decision in the case. As we were not actual parties to that cause, we could not control the matter in any way so as to prevent a settlement. But, surely, we could not require any stronger evidence that the railroad companies were convinced of their own defeat. Otherwise they would have gladly welcomed a decision which would have relieved 59
their property from the burden of this lien, and would have done everything in their power to have secured a final adjudication in their favor instead of preventing a decision.

We call your special attention to the accompanying opinion of Mr. Charles O'Conor. It was given under a deep sense of moral responsibility in course of advice sought by a bondholder to enable him to determine whether or not to embark in a litigation against the railroads. A letter signed by Messrs. 60
Evarts, Southmayd & Choate, in which it is stated that they have not time to prepare an opinion against us, has been circulated in the interest of the railroads. That letter bases its conclusions on the Minnesota case, which, we are informed by Mr. O'Conor, bears in our favor so far as it is at all applicable to the Tennessee case. It is sufficient to

61 add that Mr. Southmayd, of the above firm, urged, before the Supreme Court, that same decision in the Minnesota case as a precedent in favor of his clients; but the effect was not convincing enough to induce those clients to refrain from a settlement of the case as before stated.

We append a list of roads on which Tennessee State bonds are first mortgage liens, and the amount of bonds outstanding against each road.

62 East Tennessee, Virginia & Georgia Railroad, leased lines and branches:

East Tennessee & Georgia Railroad.....	$614,000
East Tennessee & Virginia Railroad.....	1,218,000
Memphis & Charleston Railroad.....	830,000
Cincinnati, Cumberland Gap & Charleston Railroad.....	350,000
East Tennessee & Western North Carolina Railroad.....	34,000
63 Total.....	$3,036,000

Louisville & Nashville Railroad Company, and purchased and leased lines:

Main Line.....	$ 298,000
Memphis, Clarksville & Louisville Railroad.....	791,000
Memphis & Ohio Railroad.....	1,176,000
Tenn. & Ala. R. R., Nash. & D.R.R.,	468,000
Cent. Southern R. R., Nash. & D.R.R.,	362,000
64 St. Louis & South-Eastern Railroad Company, on account of Edgefield & Kentucky Railroad.....	645,000
Total.....	$3,740,000

Nashville, Chattanooga & St. Louis Lines:	
Nashville & Chattanooga	$ 114,000
Nashville & North-Western	1,385,000
Winchester & Alabama	457,000
McMinnville & Manchester	356,000
Total	$2,312,000
Mobile & Ohio Railroad	953,000
New Orleans, St. Louis & Chicago Railroad on account Mississippi Central and Tennessee Railroad	480,000
Knoxville & Ohio Railroad Company on account of Knoxville & Kentucky Railroad	514,000
The above amounts and some issues to smaller roads make an aggregate of railroad issues made by the State of Tennessee, and which are still outstanding	11,647,000
On which there is accrued 23 per cent. interest	2,678,810
Total due	$14,325,710

Bondholders will please note that "New" bonds, issued to Tennessee railroads, and "Funding Series" bonds, not included in the above list, issued in payment of interest which accrued on railroad bonds under the Funding Acts of 1866, 1868 and 1873, are also statutory liens upon the railroads.

The members of the committee are owners to a large amount of bonds that are not liens on the railroads, which they do not propose to fund into the 50 and 4 per cent. bonds offered. They believe that the enforcement of the railroad liens will bring about a much better settlement than is now proposed. It is our duty to inform you that the legality of the proposed issue of the new 4 per cent. com-

69 promise bonds is already questioned in Tennessee, for want of sufficient acceptances to authorize the submission of the proposed settlement to popular vote, as required by the Act of the last General Assembly.

Holders of North Carolina State bonds, issued in aid of the North Carolina Railroad Company, will recollect how that State made an unsuccessful attempt to deprive such bondholders of the lien orig-
70 inally intended for their security. A like attempt in the State of Indiana, in the case of the Wabash and Erie Canal, was also unsuccessful, and the lien decided in favor of the bondholders.

Bondholders wishing to secure the benefits result ing from this litigation can do so on the following conditions, to wit: by depositing with the committee five dollars per lien bond in cash, and one past due coupon from each bond of that description. This will be required to defray the necessary costs
71 and expenses of the litigation. In no event will the bondholders be called upon for any further assessment, nor do they incur any personal liability by uniting in this plan. Should any surplus funds remain in the hands of the committee after all expenditures have been provided for the same will be returned to bondholders *pro rata*. Those who do not comply with the aforesaid conditions will be excluded from the benefits derived from the action of the committee. A certificate will be issued to each as-
72 senting bond, entitling it to any and all advantages resulting from these legal proceedings, and specifying the railroad company bound for the payment of the bond. An arrangement for calling these certificated bonds for dealings in them on the New York Stock Exchange will be made.

When it is considered that the enforcement of

these liens should make the great mass of the internal improvement bonds worth par and accrued interest, or 123 per cent., the advisability of the course which we have adopted cannot be reasonably doubted. Your signature to the enclosed assent, stating color, number and serial letter of each of your bonds is requested before June 10th. Upon receipt by the committee of the assents of a sufficient number of bonds, the holders will be notified of the issue of the certificates to be attached to the lien bonds. We propose to engage as counsel Chas. O'Conor and E. L. Andrews, of New York, and George Hoadly, of Cincinnati, to be assisted by competent counsel at Memphis, Nashville, Knoxville and Louisville.

Committee of Tennessee Bondholders.

EUGENE KELLY,
OF EUGENE KELLY & CO.

JOHN T. TERRY,
OF E. D. MORGAN & CO.

JAS. G. K. DUER,
OF JAMES G. KING'S SONS.

PETER GEDDES,
OF GEDDES & SMITH.

R. S. MORAN,
OF 107 EAST 29TH ST., N. Y.

C. AMORY STEVENS,
Treasurer.

THOMAS G. ROBINSON,
Secretary.

77

RESPONDENT'S EXHIBIT No. 3.
W. H. D. L., Spl. Exr.

Tennessee Bonds, property of EUGENE KELLY.

	220	2786	4955	7422	9460	192	3009	7302	1616	1645	2688
	289	2792	4956	7490	9500	263	3355	8879	1617	1646	2714
	292	2822	5047	7542	9551	315	4076	9003	1618	1647	4953
	321	3088	5188	7839	9537	399	4188	785	1619	1648	4954
	333	3124	5322	7886	9466	485	4159	803	1620	1649	7182
	429	3305	5417	7918	9618	527	4390	789	1621	1650	7316
	526	3422	5628	7943	9621	574	4392	2852	1622	2124	9271
	529	3543	5786	7986	9683	584	4458	3181	1623	2217	9291
	530	3548	5787	8202	9713	597	4680	242	1624	2218	73
	607	3616	5838	8207	10021	609	4833	243	1625	2396	187
78	658	3702	5846	8214	10399	1037	1539	244	1626	2614	2128
	726	3876	5906	8241	10486	1162	1540	365	1627	2616	2092
	900	4436	5342	8553	10772	926	624	366	1628	2629	6675
	901	4495	6108	8670	10773	1254	1858	367	1629	2860	6685
	902	4427	6327	8672	10926	1276	1860	368	1630	2862	1614
	797	4475	6329	8673	10960	1315	1882	369	1631	2863	1615
	1047	4517	6349	8772	10963	1563	2172	574	1632	3087	1643
	1052	4569	6484	8981	11055	1630	2173	575	1633	3855	1644
	1575	4574	6807	9011	11094	1752	2174	990	1634	3856	3975
	1773	4597	6830	9358	11176	91	2176	991	1635	3907	3976
	1811	4708	7019	9961	11177	94	2177	992	1636	3911	3977
	1820	4738	7021	10561	11201	97	3782	993	1637	3912	3978
	1825	4789	7046	8593	11475	161	3996	1063	1638	3914	4771
	1837	4875	7117	8621	11653	520	4998	1064	1639	3971	5031
	1974	4876	7129	8851	49	1055	5923	1325	1640	3972	5032
	1998	4877	7173	9053	64	1346	2850	1612	1641	3973	5033
	2240	4878	7177	9079	63	1365	6604	1613	1642	3974	5034
	5035	5254	5798	5952	6527						
	5036	5505	5799	5961	5129						
	5077	5545	5800	5962							
79	5252	5586	5801	5993							
	5253	5584	5951	6234							

319 Bonds.

80

Deposition of John T. Terry.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

versus

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

Testimony and proofs for final hearing on the part of the complainants, taken before WILLIAM H. DELANCEY, Special Examiner, duly appointed herein under and pursuant to the 67th Rule in Equity, as amended.

52 BROADWAY, NEW YORK,
October 10th, A. D. 1879.

Met pursuant to notice.

Present—Mr. E. L. ANDREWS, for Complainants.
Mr. W. Y. C. HUMES, for Respondents.

JOHN T. TERRY, a witness produced on the part of the complainants, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

5 *Direct Examination* by MR. ANDREWS:

1 Q. Are you one of the complainants in these causes?

A. I am.

2 Q. Are you an owner and holder of Tennessee bonds?

A. I am.

3 Q. Will you produce before the Examiner, for his inspection, and that of counsel for respondents here present, Tennessee bonds of which you are the
6 owner and holder.

A. I will. There they are.

(Witness produces six bonds of the State of Tennessee issued to and sold by the Memphis & Charleston R. R. Co.—*three white, three green.*)

(Certificate of said white bonds is hereto annexed, marked "Compl't's Exhibit No. 1, W. H. D'L., Sp'l Ex'r.")
7

(Certificate of said green bonds is hereto annexed, marked "Compl't's Exhibit No. 2, W. H. D'L., Sp'l Ex'r.")

(Certified copies of receipts given by the railroad companies to the State for bonds are offered in evidence, and marked as Complainant's Exhibits, and filed, under a stipulation of counsel, separately.)
8

Direct examination closed.

Cross-examination by MR. HUMES:

It is stipulated and agreed by both parties that, as to any bonds proved by Mr. Terry, issued after the Act of 1860, the numbers to

include them shall be restored in the bill as originally printed. 9

E. L. ANDREWS,
Sol'r for Compl'ts.
W. Y. C. HUMES,
Sol'r for Def't.

4 x Q. From whom, and at what date and price, did you purchase bonds Nos. 3,672, 3,673 and 3,866, Green B, dated 1 Jan'y, 1868? 10

(Objected to as immaterial.)

A. Seven or eight years ago. All these bonds cost at the prices in the Exhibits which I will furnish. I will examine, and, if I can, give the exact dates and prices.

(Paper produced, marked "Resp't's Exhibit No. 1, W. H. D'L., Sp'l Ex'r.")

5 x Q. Same question as to Nos. 719, 3,515, 4,237. 11
White B.

A. Same answer.

6 x Q. Are you not a member of the firm of E. D. Morgan & Co., and did you not buy these bonds on account of the firm?

A. I am, and did so buy them, and also on account of the firm of J. S. Morgan & Co., of London.

7 x Q. Before Gov. Morgan, a member of your firm, went to Europe in 1873, did you not sell out 12
entirely your Tennessee bonds, and did you not purchase these Tennessee bonds after he went to Europe, or since?

A. When Gov. Morgan was in the Senate of the United States, he wrote us that he had conferred with the members of Congress and senators, and, also, I think, with Andrew Johnson, of

13 Tennessee, and that he had a very high opinion of Tennessee bonds, in consequence of which we became purchasers of Tennessee bonds. This was while he was in the Senate—his term, I think was from 1863 to 1869. We sold out these bonds, and bought bonds and have owned them more or less ever sinc.

The bonds we now hold were bought from January, 1873 to August, 1873. We also bought some in March and April, 1875. According to my best
14 recollection we have not sold a single bond since 1873, except as appears from the Exhibits. We sold twenty new bonds and bought twenty old bonds which do not appear on the Exhibit. The firm of E. D. Morgan & Co. bought these.

8 x Q. Do you know whether E. D. Morgan & Co. had a correspondence with Gov. Porter in 1876–77?

A. I do. I think I wrote the letters and telegrams.

15 9 x Q. Did you sign a proposition signed by some twenty or thirty other bondholders and agents of bondholders addressed to Gov. Porter of Tennessee, dated either in December, 1876, or January or February, 1877, requesting him to submit a proposal therein contained to the General Assembly of the State of Tennessee of compromise in respect to the bonds you have now proved in these cases, and others that you then may have had?

16 (Objected to as not the best evidence, and immaterial.)

A. I have an impression that I did, but I cannot answer the question fully without seeing the document itself.

10 x Q. Are the bonds you have now sued upon all the bonds you purchased in 1873–75?

(Objected to because other property belonging to the witness not in these suits has no relevancy or materiality to the case.) 17

A. No, sir. I wish they were.

11 x Q. Were not the other bonds you purchased in 1873–5 bonds issued by the State of Tennessee for purely State purposes and not to railroads, and did you not buy them at the same price at the same date?

A. I supposed all these bonds were liens on railroads, and was deceived. I think I, or my firm, or any one I am interested in have very few bonds except those issued to or for railroads. 18

12 x Q. Please furnish the numbers of all the bonds which you purchased in 1873–75, and full description showing which are railroad bonds and which are not?

A. I will, if I can.

Adjourned to October 11th, 10:30 A. M. 19

NEW YORK, Oct. 11, 10:30 A. M.

Present—Counsel as before.

Cross-examination resumed:

Witness produces and files with his deposition the Exhibits called for in the last question.

(Marked Respondents' Exhibit No. 2.—W. H. D. L., Spl. Ex'r.) 20

13 x Q. What was the mode of selling and buying bonds in 1873–74–75?

A. According to my recollection, in 1873, bonds were sold as State bonds without any regard to their issue, but I am not quite sure whether they were not sold as old or new bonds at that time.

21 14 x Q. What was the distinction between old and new bonds ?

A. I should say that the old bonds were ante-bellum bonds.

15 x Q. Is it not a fact that the old bonds were distinguished from the new bonds by having several unpaid coupons attached to each of them which the new did not have ?

A. I am unable to give an intelligent answer to that question.

22 16 x Q. When bonds were sold at the Board of Brokers, please state fully and minutely the mode of bringing them before the Board for sale, and of selling them, and of their delivery ?

A. I never was in the Board in my life ; I cannot therefore answer the question. We buy through brokers, and they bring them in and we pay for them ; we are not brokers.

17 x Q. Did you buy the bonds contained in your Exhibit through brokers or not ?

23 A. We bought them all through brokers except the 74 which were funded.

18 x Q. In giving your order to the brokers how was it expressed ?

A. I don't think it was ever given in writing ; we gave verbal orders sometimes to buy old and sometimes new bonds.

19 x Q. Did you or any member of your firm ever see the the bonds purchased until they were delivered by the brokers ?

24 A. No, sir.

20 x Q. Did you ever designate any particular Tennessee railroad of those shown on your Exhibit, in directing your brokers to purchase Tennessee bonds ?

A. We did not and could not, as bonds are not sold in that way at the Board ?

21 x Q. How are they sold at the Board ?

A. They are sold as old and new bonds, and new 25
series.

22 x Q. Then the purchaser cannot tell what bonds he is to get under his purchases at the Board until they are delivered?

A. He cannot.

23 x Q. Were not all of yours purchased at the Board?

A. Yes, sir; I believe they were, except the funded bonds which we funded ourselves.

24 x Q. Please give me the names of the brokers 26
who purchased your bonds?

A. I cannot; we have no record of the brokers from whom we purchased bonds that I recollect of. We give a broker an order for bonds—say fifty, and he delivers them, and we pay for them. It is possible our book-keeper may be able to tell. I can't tell from whom we bought a single bond.

25 x Q. How and when did you ascertain the railroads to whom the bonds were issued that are contained in your Exhibit? 27

A. I ascertained from Peter Geddes' clerk; Mr. Robinson, the Secretary of Com. of Tennessee bondholders had the list; he did so within the last two or three years.

26 x Q. When was the Committee of Tennessee bondholders first organized?

A. Three or four years ago this past summer.

27 x Q. Have you made an agreement with Calvin Amory Stevens and others, embodying the terms upon which these suits are to be prosecuted; if yea, 28
is that agreement in writing?

(Objected to as immaterial and irrelevant.)

Complainants' counsel asks what respondents' counsel proposes to show.

The witness not having answered this question, it is agreed by counsel on both

29 sides to refer this question to Judge Blatchford, as to its legality under the above objection. Until this is decided the cross-examination is suspended.

Re-direct-examination by Mr. ANDREWS:

28 Q. Did you become the individual owner of the bonds you have proved before the Examiner by purchase from the firm of E. D. Morgan & Co?

A. I did.

30 29 Q. When your firm of E. D. Morgan & Co. and yourself became the owners of Tennessee bonds were you not aware that they were first mortgage liens upon railroads in that State?

(Respondent's counsel objects as illegal and incompetent, because it is leading, and because it asks for a legal opinion from the witness.)

A. We were so informed by the Treasurer of the State of Tennessee in our office.

31 (Respondent's counsel objects to the answer as illegal and incompetent, because it is mere hearsay.)

30 Q. When your firm and yourself became purchasers of Tennessee bonds, what security for the payment of those bonds and the interest thereon did you believe you were acquiring by such purchases?

A. I supposed the railroads would pay the amount 32 into the State, and we should receive it from the State, the State making good any deficiency.

31 Q. What security on property did you think you were acquiring by such purchases?

A. The security of the railroads—first mortgages.

32 Q. In answer to the question relating to the letter to Governor Porter you stated that you thought the firm of E. D. Morgan & Co. might have

been one of the signers of that letter ; did you not 33
have conferences with R. T. Wilson on the subject of that communication and the proposed compromise then pending ?

A. I did.

33 Q. Is this the same R. T. Wilson who is an officer of the Tennessee railroad ?

A. Yes, that is the gentleman.

34 Q. Mr. Wilson was very active in efforts to procure the Tennessee bondholders to surrender their bonds and accept a new obligation from the 34
State of Tennessee, was he not ?

(Respt's counsel objects as incompetent and illegal because it is leading and not proper on re-examination.)

A. If you mean to ask me if Mr. Wilson was very active in endeavoring to procure a settlement with the State, I answer he was.

35 Q. Was he not also very active in procuring the bondholders to enter into the arrangement de- 35
scribed in my previous question ?

(Same objection.)

A. He wanted to have us all agree to a compromise, if that is what you mean.

36 Q. What did you understand was the interest of R. T. Wilson in his anxiety to induce the Tennessee bondholders to surrender their present holdings and accept other bonds of the State of Tennes- 36
see ?

A. I inferred that the object was a desire to have the railroads relieved from their obligations on the bonds.

(Respt's counsel objects to answer as illegal and incompetent.)

37 37 Q. Did you state anything to R. T. Wilson about the time of his efforts to carry through the settlement above referred to, in reference to the liens of Tennessee bonds on railroads in that State, and if you stated anything, what?

A. I can't state exactly what I said to him, but we had a conversation on the subject. I expressed the opinion that the bondholders might bring a suit against the roads, to which he replied: "That ends it; I would have nothing to do with the matter
38 further," or words to that effect. That is, if the suits were brought, he would have nothing more to do with us in attempting to effect a compromise with the State.

38 Q. Was it not about this time that you had the written opinion of one of the most distinguished lawyers in Tennessee to the effect that Tennessee bonds were made paramount liens on railroads by statutes of that State?

39 (Respt's counsel objects, because it calls for incompetent, hearsay, as well as secondary evidence, and also as leading.)

A. I think it was.

Re-cross examination by MR. HUMES:

39 x Q. Who was the Tennessee treasurer with whom you had the conversation in your office, and when was it?

A. My impression is his name was Morrow, and
40 he had some Tennessee bonds for sale. This was previous to these purchases in 1873, to the best of my rocollection. It was since the war. The conversation with Mr. Wilson, which I have testified to, took place about the time of the letter to Governor Porter, in '76 or '77.

Adjourned to Oct. 17, 1879.

OCTOBER 17, 1879. 41

40 x Q. Will you now answer cross-question 27, just read to you by the Examiner?

A. I produce two papers which embody the agreement.

Papers marked in evidence,
Resp'ts. Exhibit No. 3, W. H. D. L., Spl, Exr.
" " " 4, W. H. D. L., Spl. Exr.

42

41 x Q. Are those two papers the agreement you signed?

A. I believe they are copies of them; correct copies of them.

42 x Q. Is that agreement embodied in these two papers, the only one that you have entered into for the prosecution of these suits?

A. We have entered into no contract which includes the payment of all our counsel.

43 x Q. I ask again, whether the foregoing Exhibits contain the only agreement that you have made for the prosecution of these suits? 43

(Compl'ts' counsel objects to the question as immaterial and irrelevant, and he objects to any answer, and consents to waive subpœna and to go before Judge Blatchford on the validity of the question.)

A. Under advice of counsel I decline to answer.

44 x Q. Did you join in the preparation of that paper and sign the name of E. D. Morgan and Co. to it? 44

A. I cannot answer that question, but I admit E. D. Morgan & Co., signed it, some one of the firm.

(This paper is the same as annexed to deposition of Peter Geddes, as Respondents'

45 Exhibit No. 1, and it is consented that it need, not be attached to this deposition.)

45 x Q. Did a member of the firm of E. D. Morgan & Co. sign the letter now shown you of Feby. 23, 1877, addressed to his Excellency, James D. Porter, Governor of Tennessee?

A. I recognize the signature as that of my partner. I think I was temporarily absent in Cuba at the time.

46 46 x Q. On the bonds which you held prior to 1873 were there not attached a number of unpaid coupons, I mean on the old Tennessee Sixes?

A. I think there were.

47 x Q. Did your firm or you ever claim, demand or present for payment any of these unpaid coupons (while you held them) to any railroad Co.?

A. No, sir; I think not.

48 x Q. Were you not aware that the railroads were negotiating for State bonds, and attempting
47 to sell their own to purchase State bonds to make settlements of their debts to the State while these negotiations were progressing?

A. I was not.

49 x Q. When in the spring of 1870, the East Tennessee Va. & Ga., Railroad Co. were endeavoring to purchase State bonds with which to pay their debt to the State, were you not aware or informed of it?

A. I was not; never knew they bought a bond.

48 50 x Q. Were you not informed or aware of this same company's efforts in New York City, through the Stock Exchange, of New York, and other parties to sell their substitution bonds?

A. I was not, and never knew they had a bond out on the road till within a few weeks. Never heard of it.

Adjourned to 20th Oct., 1879.

OCTOBER 20th, 1879. 49

Adjourned to further notice.

NOVEMBER 24th, 1879.

And further deponent saith not.

JOHN T. TERRY.

Subscribed and sworn before me this 24th day of November, A, D. 1879.

WILLIAM H. DELANCEY,
Special Exaniner. 50

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States, for the Western District of Tennessee, to take the testimony and proofs of both parties, in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereunto annexed I was attended at my office, No. 52 Broadway, in the City 51
of New York, by the counsel and witness aforesaid.

That the said witness was duly sworn in the above-entitled suit and examined, and the deposition was reduced to writing and read to the witness and by him subscribed in my presence. And that the Exhibits hereto annexed marked Complts., Exhibits, No. 1, 2, and Respondents Exhibits, No. 1, 2, 3 and 4, were introduced in evidence in said cause during the taking of said deposition. 52

Dated 24 Nov., 1879.

WILLIAM H. DELANCEY,
Special Examiner.

53 In the case of Calvin Amory Stevens, *et al.*, on behalf of the holders of Internal Improvement Bonds, of Tennessee issued to the Memphis & Charleston Railroad Company

versus

54 The Memphis & Charleston Railroad Company, *et al.*

In the United States Circuit Court,

For the Western District of Tennessee.

I hereby certify that there were produced before me during the taking of the deposition of John T. Terry in this cause three (3) Tennessee Bonds, each
55 bond being for the principal sum of one thousand dollars, and bearing the impression of the Great Seal of the State of Tennessee on the face thereof.

A true and exact copy of one of said bonds is as follows:

COMPLAINANTS EXHIBIT, No. 1,

W. H. D. L., Sp'l Ex'r.

56 M. United States of America. M.

No. 719. B.

State of Tennessee.

Know all men by these presents, that the State of Tennessee acknowledges to owe to or order, one thousand dollars, lawful money of the

United States, which sum the said State promises to pay in the City of New York, on the 1st day of January, 1892, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the presentation of the coupons thereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of the General Assembly of said State, passed at its Session of 1851–2.

In witness whereof I, W. B. Campbell, Governor of said State, have hereunto signed my name and caused the same to be countersigned by the Secretary of said State, and the Great Seal of said State to be hereto affixed, at Nashville, this 1st day of January, 1852.

W. B. CAMPBELL,
Governor.

W. B. A. RANNEY,
Secretary of the State.

$1,000. $1,000.

Color, white.

The other two (2) of said bonds are of like tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows: 3,515, 4,237.

All of said bonds are dated on the 1st day of January, 1856.

Nos. 3,515, 4,237 are signed:

ANDREW JOHNSON,
Governor.

FR. N. W. BURTON,
Secretary of State.

61 Said bonds having thirty-two (32) coupons attached to each bond.

The last coupon attached to each of said bonds being the coupon first falling due is in all respects except as hereinafter stated similar and like unto the following true and exact copy thereof:

$30. $30.

The Treasurer of the State of Tennessee will pay the bearer thirty dollars, in the City of New York, on the first day of July, 1876, being the semi-annual
62 interest then falling due on bond No. 719.

ARTH. A. CROZIER,
Comptroller.

All the coupons attached to bonds number 3,515, 4,237 are signed.

J. C. LUTTRELL,
Comptroller.

There are seven (7) overdue coupons upon each
63 of the afore numbered bonds, the first coupon thereof having fallen due on the 1st day of July, 1876. The other six of said coupons fall due at intervals of six months from the date of the coupon above mentioned.

All the aforesaid bonds with the coupons attached thereto, were left by the witness, John T. Terry, for inspection by me and the solicitor for the respondents then and there present, and were inspected by me and by him.

64 The endorsements on said bonds are as follows: on bond No. 719, registered under 9th Section of Funding Act, approved May 17, 1873. Jno. C. Burch, Comptroller, Chas. N. Gibbs, Secretary of State.

Audited, January 26, 1874.

On bond No. 3,515, same " " " "
" " " 4,237, " " " " "

On the face of bond 3,515 are the words "approv- 65
ed as 3,515."

WILLIAM H. DELANCEY,
Special Examiner.

66

IN THE CASE OF CALVIN AMORY STEVENS, *et al.*, ON BEHALF OF THE HOLDERS OF INTERNAL IMPROVEMENT BONDS, OF TENNESSEE, ISSUED TO THE MEMPHIS & CHARLESTON RAILROAD COMPANY

versus 67

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

IN THE UNITED STATES CIRCUIT COURT,

For the Western District of Tennessee.

I hereby certify that there were produced before 68
me during the taking of the deposition of John T. Terry in this cause three (3) Tennessee Bonds, each bond being for the principal sum of one thousand dollars, and bearing the impression of the Great Seal of the State of Tennessee on the face thereof.

A true and exact copy of one of said bonds is as follows:

69 COMPLAINANTS EXHIBIT No. 2.

W. H. D. L. *Spl. Exr.*

$1,000. $1,000.

UNITED STATES OF AMERICA.

No. 3,672. No. 3,672.

Know all men by these presents, that the State of
70 Tennessee acknowledges to owe to or order, one thousand dollars of the lawful money of the United States of America, which the said State promises to pay in the city of New York, on the 1st day of January, 1900, with the interest thereon at the rate of six per centum per annum, according to the tenor, and upon the presentation of the coupons hereunto attached. For the payment of said sum of money and the interest thereon at the times and places and in the manner aforesaid, the
71 faith of the State of Tennessee is irrevocably pledged. This bond being issued in pursuance and by authority of an Act of the General Assembly of said State, passed February the 11th, 1852, "to establish a system of internal improvements in said State," and the acts of said General Assembly amendatory thereof, and the act of December 7th, 1867.

In testimony whereof and in pursuance of the act aforesaid, I, W. G.
72 Brownlow, Governor of the State of Tennessee, have hereunto subscribed my name officially, and caused the same to be countersigned by the Secretary of State, with the Great Seal of the State affixed. Done at the Executive Department in the city of Nash-

ville, this 1st day of January, A. 73
D. 1868.

W. G. BROWNLOW,
Governor.

A. J. FLETCHER,
Secretary of State.

Color green.

The other two (2) of said bonds are of like tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows: 74
3,673—3,866.

All of said bonds are dated on the 1st day of January, 1868.

Nos. 3,673—3,866 are signed.

W. G. BROWNLOW,
Governor.

A. J. FLETCHER,
Secretary of State. 75

Said bonds having forty-eight (48) coupons attached to each bond.

The last coupon attached to each of said bonds, being the coupon first falling due, is in all respects except as hereinafter stated, similar and like unto the following true and exact copy thereof:

$30. $30.
76

The Treasurer of the State of Tennessee will pay to the bearer thirty dollars, in the city of New York, on the first day of July, 1876, being semi-annual interest due on bond No. 3,672.

G. W. BLACKBURN,
Comptroller.

77 All the coupons attached to bonds numbered 3,673—3866, are signed by

G. W. BLACKBURN,
Comptroller.

There are seven (7) overdue coupons upon each of the above numbered bonds, the first coupon having fallen due on the 1st day of July, 1876. The other six of said coupons fall due at intervals of six months from the date of the coupon above
78 mentioned.

All the aforesaid bonds with the coupons attached thereto, were left by the witness, John T. Terry, for inspection by me and the solicitor for the respondents then and there present, and were inspected by me and by him.

The endorsements on said bonds are as follows: on bond No. 3,672, "registered under 9th section of funding act, approved March 17th, 1873."

79 JNO. C. BURCH,
Comptroller.
CHAS. N. GIBBS,
Secretary of State.
Audited Jan. 26, 1874.

On bond 3,673, same, " " " "
3,866, same, " " " "

WILLIAM H. DELANCEY,
Special Examiner.

80

RESPONDENT'S EXHIBIT No. 1. 81

W. H. D. L., Spl. Ex'r.

BOUGHT.

1873.				
Jany.	30	25	Bonds, at	$81\frac{7}{8}$
Feby.	15	85	" at av'ge	$83.36\frac{25}{85}$
July	23	15	" "	$81\frac{1}{8}$
	25	2	" "	$80\frac{7}{8}$
	28	30	" "	$81\frac{5}{8}$
Aug	2	35	" "	$81\frac{66}{}$ 82
	12	25	" "	$82\frac{1}{8}$
	18	5	" "	"
	23	12	" "	"
	20	9	" "	"
	25	5	" "	"
		248	" "	"
Jany. or Feby.		74	" for coupons above Bds. funded & a fracn. bot. to make a bond.	
		322	"	83

SOLD.

1874.				
Mar.	6		20	Bonds, at $71-\frac{1}{8}$
		50	30	" " $71-\frac{1}{4}$
		272		

BOUGHT.

1875.				84
Mar.	31	6	Bonds, at	48
		6	"	$48\frac{1}{8}$
		13	"	$47\frac{5}{8}$
Apl.	1	3	"	$48\frac{1}{8}$
	2	30	"	"
		330	"	

85 RESPONDENT'S EXHIBIT No. 2.

W. H. D. L., Spl. Ex'r.

NEW BONDS.

Series White Bonds, Black Letter D, Funding Bonds, Act 1866, six per cent., mature January, 1892. Nos. 1 to 4941.

7	463	1235	2041	2666	3029	3836
98	471	1236	2078	2718	3030	3839
86 141	496	1237	2079	2843	3031	3939
142						
145	522	1297	2119	2901	3034	4093
148	535	1406	2199	2933	3035	4294
150	640	1449	2215	2970	3036	4311
199	715	1464	2319	3010	3037	4384
239	813	1542	2351	3012	3388	4508
452	1212	1663	2511	3027	3401	4707
	1234	2010	2540	3028	3684	4827
						3339

87

FUNDED COUPONS.

Law identical, same as original.

OLD BONDS.

White Bonds, Black Letter B, issued under Act 1851-2. Nos. 1 to 7908 due in 1892, 7909 to 11806 due in 1898.

68 East Tenn. & Virginia.
88 719 Memphis & Charleston.
1250 East Tenn. & Georgia.
2198 Memphis & Ohio.
2482 do.
2593 McMinnville & Manchester.
2846 do.
2849 do.
2850 do,

2901 Memphis & Ohio. 85
2905 do.
3277 do.
3515 Memphis & Charleston.
3663 Mississippi Central & Tenn.
3836 do. do.
4237 Memphis & Charleston.
5292 Edgefield & Kentucky & L. & N. R. R.
5742 Mobile & Ohio.
6557 Louisville & Nashville.
6620 do. do. 90
6672 do. do.
7518 Winchester & Alabama.
7584 Memphis & Ohio.
7683 do.
7801 Central Southern.
8156 Edgefield & Kentucky & L. & N. R. R.
8390 Memphis & Ohio.
8643 do.
9118 Memphis, Clarksville & Louisville.
9152 Memphis & Ohio. 91
9518 Rogersville & Jefferson.
9573 Memphis, Clarksville & Louisville.
10084 Edgefield & Kentucky.
10762 Nashville & Chattanooga.
10828 Edgefield & Kentucky.
10932 Memphis, Clarksville & Louisville.
11420 Nashville & Northwestern.
11522 do.
11534 do.

92

White Bonds, Series C, Black Letter, six per cent., due in 1898, issued under Act 1851-2.

86 Nashville & Northwestern.
1874 Mobile & Ohio.

93 MEMORANDUM TENNESSEE BONDS—NEW BONDS.

Series Green Bonds, no letter, six per cent., issued under Act 1851 and 2, and Amds. to, Nos. 1 to 8470 due 1892, Nos. 8471 to 10000, due in 1900.

960 Memphis, Clarksville & Louisville R. R.
599 McMinnville & Manchester R. R.
600 Do.
207 Nashville & No. Western.
94 847 Memphis, Clarksville & L. R. R.
848 do.
849 do.
1326 Edgefield & Kentucky R. R.
1329 do.
1507 East Tenn. & Virginia.
1511 do.
1959 Mississippi & Tenn.
2363 Nashville & Northwestern.
2391 do.
95 3132 Edgefield & Kentucky.
3133 do.
2643 Rogerville & Jefferson.
2644 do.
3348 McMinnville & Manchester.
3733 Nashville & Northwestern.
3689 Winchester & Alabama.
3536 do.
4078 do.
4147 Nashville & Northwestern.
96 4288 Cin., Cumberland Gap & Charleston.
4530 Knoxville & Kentucky.
4861 East Tennessee & Georgia.
4866 do.
5014 Cin., Cumberland Gap & Charleston.
5023 do.
$4,066.
5025 do.

5026 Cin., Cumberland Gap & Charleston. 97
5031 do.
5089 do.
5099 do.
5169 Miss. & Tenn. Road.
5340 Memphis & Ohio.
5455 do.
5637 Nashville & Northwestern.
6018 Renewal.
6081 East Tenn. & Virginia Rd.
6107 do. 98
6161 do.
6362 Knoxville & Kentucky.
6628 do.
6662 do.
6670 do.
7109 do.
7417 Knoxville & Charleston.
7505 do.
7667 Winchester & Alabama.
7958 Cin., Cumberland & Charleston. 99
8228 Nashville & Northwestern.
8328 Renewal.
8336 do.
8635 do.
8981 Knoxville & Charleston Rd.
9107 Cin., Cumberland Gap & Charleston.
9810 East Tenn. & West No. Carolina R. R.

Series Green Bonds, letter B, 6 per cent., mature 1900. 100

12 Miss. Central.
18 do.
152 Nashville & Northwestern.
183 do.
185 do.
246 Miss. Central.

101	318	Evansville, Hendersonville & Nashville.
	711	Edgefield & Kentucky.
	752	Miss. & Tenn. Road.
	1286	Knoxville & Kentucky.
	1403	" & Charleston.
	1446	" "
	1447	" "
	1448	" "
	1449	" "
	1450	" "
102	1452	" "
	1499	Edgefield & Kentucky.
	1725	Cin. & Cumberland Gap.
	1726	Cin. & Cumberland Gap.
	1746	Cin. & Cumberland Gap.
	2006	Winchester & Alabama.
	2204	Knoxville & Kentucky.
	2316	do.
	2431	do.
	2434	do.
103	2464	do.
	2683	East Tenn. & West North Carolina R. R.
	2717	Cin., Cumberland Gap & Charleston.
	2603	East Tenn. & W. No. C.
	2605	do.
	2746	Cin., Cumberland Gap & Charleston.
	2826	Southern.
	3222	Nashville & Northwestern.
	3357	do.
	3381	do.
104	3465	do.
	3435	do.
	3672	Memphis & Charleston.
	3673	do.
	3866	do.
	4725	Tenn. & Pacific R. R.

Series Green Bonds, Letter C, 6 per cent., mature in 1900. 105

494
660
725
} To Comptroller.

RESPONDENT'S EXHIBIT NO. 3.—W. H. D. L., Sp'l. Ex'r. 106

To The Committee of Tennessee Bondholders:

I hereby assent to the plan and conditions of the committee's circular of May 17th, 1879.

LIST OF BONDS.

Color.	Letter.	Numbers.	107

108

109 RESPONDENT'S EXHIBIT NO. 4.—W. H. D. L., Sp'l. Ex'r.

OFFICE OF COMMITTEE OF
TENNESSEE BONDHOLDERS,
No. 31 Nassau Street.

P. O. Box 936. NEW YORK, May 17, 1879.

To the Holders of Tennessee Bonds:

In our last circular we informed you that the committee was considering the best means for enforcing
110 our first mortgage liens against the railroads in Tennessee. After full deliberation, with advice of counsel, and with the approval of the following prominent houses interested: Brown Brothers & Co., Maitland, Phelps & Co., Ward, Campbell & Co.; and of the Presidents of the Seaman's Savings Bank, and the Globe Mutual Life Insurance Co. of New York; and of large individual holders in New York, Baltimore, Philadelphia and Chicago, we have decided to adopt the suits lately instituted by
111 Mr. C. Amory Stevens. Prompt action on the part of the bondholders will enable us to bring these suits to trial during the ensuing summer.

It may be well for us to give some of the considerations that make us confident of a successful enforcement of the lien conferred on our bonds by the distinct language of the Tennessee Statutes. While Tennessee bonds of the new issue were being offered for sale in behalf of the railroads of the State, S. Watson, "agent for the State of Tennes-
112 see," addressed the following argument to the public, which was printed in pamphlet form in 1868:

"The important question for the bondholder now "is, What security have I for the payment of the "principal and interest of my bond? The State "debt proper is only about four millions. The "railroads and all their rolling stock are mortgaged "to the State to secure the *payment of bonds*

"*loaned.* This mortgage, as bondholders must 113
"know, enures to their benefit. For the payment
"of twenty-nine million bonds, which will be the
"entire amount of bonds issued to the roads, in-
"cluding those that may be issued under the recent
"Act of the Legislature, *the bondholders have*
"*as security* roads which, when completed, will be
"nearly two thousand miles in length, and which
"will be worth fully seventy million dollars. In
"addition to that, they have the whole resources
"of the State solemnly pledged to them." 114

Again, in 1868, when the Legislature of Tennessee sought to impair our securities, Gov. Brownlow, then chief executive, sent a message to that body remonstrating against the proposed measures in the following emphatic language:

"The State, in point of honor and fact, holds the
"lien in a fiduciary capacity. She holds it *in trust*
"for the benefit of the bondholders. She honor-
"ably has no right to abandon it or surrender it to
"the companies. She ought not to prove faithless 115
"in this *trust*, but maintain and execute it as the
"bondholders understood it and as the people of
"the State understood it. The bondholders are in-
"terested in these resources to pay the bonds they
"hold, and the people are interested in them to see
"that they are not to be taxed to pay interest or
"principal of bonds for which the railroads are
"pledged by the terms of the law."

The assurance of our rightful legal claims against the railroads is strongly fortified by the following 116 facts:

In April, 1878, the committee addressed a circular to the bondholders notifying them that it was about to enforce this lien. We petitioned to be heard in the Mobile and Ohio case then pending on appeal before the Supreme Court of the United States. In that suit the question whether or not

117 the holders of Tennessee bonds had a first mortgage lien upon railroads in that State, was clearly presented. The cause was fully argued by several counsel for the railroad company as well as by our counsel, and the Court took the case under advisement. Some time after, while we were confidently awaiting a decision in our favor, we were surprised to learn that the railroad company had settled the case with the party to the record in that suit—that stipulations had been filed in the office of the Clerk
118 of the Supreme Court—that copies had been sent to the several Judges of the Supreme Court—and, in short, that everything had been done by the railroad officials which it was possible to do to forestall a decision in the case. As we were not actual parties to that cause, we could not control the matter in any way so as to prevent a settlement. But, surely, we could not require any stronger evidence that the railroad companies were convinced of their own defeat. Otherwise they would have gladly
119 welcomed a decision which would have relieved their property from the burden of this lien, and would have done everything in their power to have secured a final adjudication in their favor instead of preventing a decision.

We call your special attention to the accompanying opinion of Mr. Charles O'Conor. It was given under a deep sense of moral responsibility in course of advice sought by a bondholder to enable him to determine whether or not to embark in a litigation
120 against the railroads. A letter signed by Messrs. Evarts, Southmayd & Choate, in which it is stated that they have not time to prepare an opinion against us, has been circulated in the interest of the railroads. That letter bases its conclusions on the Minnesota case, which, we are informed by Mr. O'Conor, bears in our favor so far as it is at all applicable to the Tennessee case. It is sufficient to

add that Mr. Southmayd, of the above firm, urged, 121
before the Supreme Court, that same decision in the Minnesota case as a precedent in favor of his clients; but the effect was not convincing enough to induce those clients to refrain from a settlement of the case as before stated.

We append a list of roads on which Tennessee State bonds are first mortgage liens, and the amount of bonds outstanding against each road.

East Tennessee, Virginia & Georgia Railroad, 122
leased lines and branches:

East Tennessee & Georgia Railroad	$614,000
East Tennessee & Virginia Railroad	1,218,000
Memphis & Charleston Railroad	830,000
Cincinnati, Cumberland Gap & Charleston Railroad	350,000
East Tennessee & Western North Carolina Railroad	34,000
Total	$3,036,000 123

Louisville & Nashville Railroad Company, and purchased and leased lines:

Main Line	$ 298,000
Memphis, Clarksville & Louisville Railroad	791,000
Memphis & Ohio Railroad	1,176,000
Tenn. & Ala. R. R., Nash. & D. R. R.,	468,000
Cent. Southern R. R., Nash. & D. R. R.,	362,000 124
St. Louis & South-Eastern Railroad Company, on account of Edgefield & Kentucky Railroad	645,000
Total	$3,740,000

125	Nashville, Chattanooga & St. Louis Lines:	
	Nashville & Chattanooga	$ 114,000
	Nashville & North-Western	1,385,000
	Winchester & Alabama	457,000
	McMinnville & Manchester	356,000
	Total	$2,312,000
	Mobile & Ohio Railroad	953,000
126	New Orleans, St. Louis & Chicago Railroad on account Mississippi Central and Tennessee Railroad	480,000
	Knoxville & Ohio Railroad Company on account of Knoxville & Kentucky Railroad	514,000
	The above amounts and some issues to smaller roads make an aggregate of railroad issues made by the State of Tennessee, and which are still outstanding	11,647,000
127	On which there is accrued 23 per cent. interest	2,678,810
	Total due	$14,325,710

Bondholders will please note that "New" bonds, issued to Tennessee railroads, and "Funding Series" bonds, not included in the above list, issued in payment of interest which accrued on railroad bonds under the Funding Acts of 1866, 1868 and 1873, are also statutory liens upon the railroads.

128 The members of the committee are owners to a large amount of bonds that are not liens on the railroads, which they do not propose to fund into the 50 and 4 per cent. bonds offered. They believe that the enforcement of the railroad liens will bring about a much better settlement than is now proposed. It is our duty to inform you that the legality of the proposed issue of the new 4 per cent. com-

promise bonds is already questioned in Tennessee, 129
for want of sufficient acceptances to authorize the submission of the proposed settlement to popular vote, as required by the Act of the last General Assembly.

Holders of North Carolina State bonds, issued in aid of the North Carolina Railroad Company, will recollect how that State made an unsuccessful attempt to deprive such bondholders of the lien originally intended for their security. A like attempt 130
in the State of Indiana, in the case of the Wabash and Erie Canal, was also unsuccessful, and the lien decided in favor of the bondholders.

Bondholders wishing to secure the benefits resulting from this litigation can do so on the following conditions, to wit: by depositing with the committee five dollars per lien bond in cash, and one past due coupon from each bond of that description. This will be required to defray the necessary costs 131
and expenses of the litigation. In no event will the bondholders be called upon for any further assessment, nor do they incur any personal liability by uniting in this plan. Should any surplus funds remain in the hands of the committee after all expenditures have been provided for the same will be returned to bondholders *pro rata*. Those who do not comply with the aforesaid conditions will be excluded from the benefits derived from the action of the committee. A certificate will be issued to each as- 132
senting bond, entitling it to any and all advantages resulting from these legal proceedings, and specifying the railroad company bound for the payment of the bond. An arrangement for calling these certificated bonds for dealings in them on the New York Stock Exchange will be made.

When it is considered that the enforcement of

these liens should make the great mass of the internal improvement bonds worth par and accrued interest, or 123 per cent., the advisability of the course which we have adopted cannot be reasonably doubted. Your signature to the enclosed assent, stating color, number and serial letter of each of your bonds is requested before June 10th. Upon receipt by the committee of the assents of a sufficient number of bonds, the holders will be notified of the issue of the certificates to be attached to the lien bonds. We propose to engage as counsel Chas. O'Conor and E. L. Andrews, of New York, and George Hoadly, of Cincinnati. to be assisted by competent counsel at Memphis, Nashville, Knoxville and Louisville.

Committee of Tennessee Bondholders.

EUGENE KELLY,
OF EUGENE KELLY & CO.

JOHN T. TERRY,
OF E. D. MORGAN & CO.

JAS. G. K. DUER,
OF JAMES G. KING'S SONS.

PETER GEDDES,
OF GEDDES & SMITH.

R. S. MORAN,
OF 107 EAST 29TH ST., N. Y.

C. AMORY STEVENS,
Treasurer.

THOMAS G. ROBINSON,
Secretary.

DEPOSITION OF PETER GEDDES.

UNITED STATES CIRCUIT COURT, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston Railroad Company

vs. 2

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

Testimony and proofs for final hearing on the part of the complainants, taken before William H. DeLancey, Special Examiner, duly appointed under and pursuant to the 67th Rule in Equity, as amended. 3

52 Broadway,
NEW YORK, Oct. 13, 1879.

Met pursuant to notice.

Present—Mr. ANDREWS, *for Compl'ts*,
Mr. HUMES, *for Resp'ts.*

[Deposition taken subject to all legal objections of both parties.] 4

PETER GEDDES, a witness produced on the part of the complainants, being first duly cautioned and sworn in the above-entitled suit to testify the truth,

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PETER GEDDES, a witness produced on the part of the complainants, being first duly cautioned and sworn in the above-entitled suit to testify the truth,

5 the whole truth, and nothing but the truth, deposes and says:

Direct examination by MR. ANDREWS:

1 Q. Are you one of the complainants in these causes?

A. I am.

2 Q. Are you an owner and holder of Tennessee bonds?

A. I am.

6 3 Q. Will you produce before the examiner Tennessee bonds of which you are the owner and holder for his inspection and that of respondents' counsel here present?

A. I will.

(Witness produces 6 bonds of the State of Tennessee issued to, and sold by, the East Tennessee & Virginia R.R. Co.

Also 2 bonds of the State of Tennessee is-
7 sued to, and sold by, the East Tennessee & Georgia R. R. Co.

Also 6 bonds of the State of Tennessee issued to, and sold by, the Memphis & Charleston R.R. Co.

Certificates of which last are hereto annexed and marked Complainant's Exhibit No. 1, "W. H. D. L., Spl. Exr.")

(Complainant's counsel offers in evidence certified copies of the receipts given by the
8 R.R. Cos. to the State for bonds, and marked Complainants' Exhibits, and are filed separately under a stipulation of counsel.)

Direct examination closed.

Cross examination by Mr. HUMES:

4 x Q. You have produced 14 bonds issued by

the State of Tennessee; are these bonds your own 9
private property?

A. They are.

5 x Q. When did you buy them?

A. That I can't say.

6 x Q. Have you no idea as to the year in which you bought them?

A. I think I have owned part of them since 1873. I think I have owned some of them since before past-due coupons were funded in 1874.

7 x Q. Did you fund those that you owned at the 10
time of the funding under the Act of 1873?

A. I funded no bonds, but funded the past-due coupons from the bonds I owned at that time.

8 x Q. How many bonds of the State of Tennessee did you own at that time?

A. Twenty thousand.

9 x Q. Did you fund the coupons on them in person, or through an agent; if so, then give the name of that agent?

A. I funded the past due coupons from them in 11
person.

10 x Q. Did you also register the bonds at the time you funded the coupons?

A. The bonds were audited and registered at that time.

11 x Q. How did you purchase the twenty thousand dollars of bonds above given?

A. I purchased them on an order here in New York, sent from Chicago, where I was then living.

12 x Q. To whom was the order addressed? 12

A. My impression is it was sent to Ward, Campbell & Co., who were brokers in New York then and now.

13 x Q. What did the order direct them to do?

A. I suppose to buy Tennessee old bonds on my account.

13 14 x Q. Did you give them any particular directions as to what particular bonds to purchase?

A. I think I directed them only to buy old bonds.

15 x Q. Did you limit the price?

A. I fancy I did, but I don't recollect much about it.

16 x Q. At what time did you purchase them?

A. I think it was after the passage of the funding Act of 1873, and before the funding of the past due coupons.

14 17 x Q. At what price did you buy them?

A. Eighty per cent. of their par value.

18 x Q. When did you buy those of the bonds you have proved that you did not buy in 1873?

A. I may have bought all of these bonds in 1873; I can't tell now.

19 x Q. Have you not bought Tennessee bonds since 1873? If so, when?

A. I have undoubtedly bought bonds since, but I can't tell exactly when; I bought perhaps in 1874–
15 5–6.

20 x Q. When did you first obtain the information by which you ascertained that six of the bonds proved were issued to the Memphis and Charleston Railroad, six to the East Tennessee and Virginia, and two to the East Tennessee and Georgia Railroads?

A. The first information that I had of the issues to the various railroads of Tennessee was derived from a statement published by Comptroller Penne-
16 backer, of Tennessee, about 1870; as to when I first ascertained as to these particular bonds proved I cannot say.

21 x Q. Did you not ascertain it after you had purchased the bonds?

A. Undoubtedly, yes, that is, after I purchased the first $20,000; as to the others I don't recollect.

22 x Q. Did you not buy those bonds which you

purchased in 1874-5-6 at open sale at the Board of Brokers ?

A. They were undobtedly bought on orders from me ; whether at the Board of Brokers or not I cannot say.

23 x Q. What did those orders call for ?

A. They may have called for old Tennessee bonds or new Tennessee bonds or new series.

24 x Q. In any instance did you ever know the numbers of the bonds until they were delivered to you or your order ?

A. I may have known the numbers before I purchased them.

25 x Q. When you gave orders to buy did you specify particular numbers ?

A. In some instances the numbers were submitted to me before buying.

26 x Q. How about other instances ?

A. In others I bought them on orders without specifying numbers.

27 x Q. What did you specify in those orders.

A. What I desired to buy, either old bonds, new bonds or new series bonds, as I might wish to buy.

28 x Q. Do you own any other State of Tennessee bonds than those you have proved.

A. I do.

29 x Q. What amount ?

A. That I decline to answer.

30 x Q. Are they bonds issued for purely State purposes or loans to railroads ?

A. I believe all my bonds were issued to railroads.

31 x Q. Have you not entered into an agreement with Calvin A. Stevens and others to prosecute these suits on terms set forth in that agreement, if yea, state those terms or produce the agreement ?

A. I have agreed with some others to prosecute

21 the suits, the terms of agreement I decline to give or to produce the agreement.

32 x Q. Did you not, on the 15th February, 1877, draw up with others, sign and forward to Gov. Porter, of Tennessee, the paper, a copy of which is now shown to you?

A. That is my recollection.

(Paper offered and marked in evidence Respondents Exhibit No. 1. W. H. D. L., Spl. E'x.)

22

33 x Q. Did you not write and forward the letter of Feb. 23d, 1877, here shown you?

A. The penmanship is mine. The letter is from Geddes & Smith, and E. D. Morgan & Co. It was forwarded to Gov. Porter.

34 x Q. In whose handwritings are the signatures "Geddes & Smith," and "E. D. Morgan & Co.?"

A. "Geddes & Smith" is in my handwriting.

23 "E. D. Morgan and Co." I cannot say in whose.

35 x Q. Who procured E. D. Morgan & Co's. signature?

A. That I can't say. I don't recollect whether I procured it or whether the letter was the joint work of Geddes & Smith, or E. D. Morgan & Co.

(Certified copy of the letter to Gov. Porter offered in evidence and marked "Respts. Exhibit, No. 2. W. H. D. L., Spl. Ex'r.)"

24

36 x Q. I now show you four letters dated respectively New York, August 1, August 23, August 27, August 29, 1877, signed P. Geddes, addressed to Hon. James L. Gaines, Nashville, Tennessee; are they not all in your own handwriting, and did you not forward them by mail to Mr. Gaines, Comptroller of Tennessee?

A. No, sir, not to Mr. Gaines, Comptroller of 25
Tennessee. The letter dated August 1, 1877, is addressed to Hon. James L. Gaines, Comptroller, Nashville, and marked "private." The letter dated August 23, 1877, is addressed to James L. Gaines, Comptroller; that of August 27, 1877, is addressed to Hon. James L. Gaines, Nashville, and marked "Private," and that of August 29, 1877, is addressed to Hon. James L. Gaines, Nashville. They are all in my handwriting and were forwarded.

26

[Certified copies are offered in evidence and marked "Respts. Exhibits 3, 4, 5, 6," respectively. W. H. D. L., Sp'l Ex'r.]

Cross-examination adjourned to 14th October, 3 P. M.

37 x Q. Did you not, while R. T. Wilson was negotiating for the purchase of State bonds in 1877 to pay off the Memphis & Charleston R. R. debt to the State of Tennessee, urge him repeatedly to com- 27
plete the purchase of the bonds and finish this settlement with the State?

A I don't know that Mr. Wilson was negotiating for Tennessee bonds at that time for that purpose. I had several interviews with Mr. Wilson about the time that the extra session of the Legislature of Tennessee was called. Mr. Wilson professed to be very desirous that a compromise of the debt of Tennessee should be effected. I was also willing to compromise with the State. At some of our inter- 28
views I may have suggested to Mr. Wilson that it would promote a compromise with the State of Tennessee if the Memphis & Charleston R. R. settled with the State, but I have no recollection of having urged him to make a settlement, on the contrary, refused to either sell or lend him bonds for that purpose.

29 38 x Q. Did not Mr. Wilson inform you at these interviews, or some of them, that he was then trying to obtain bonds of the State of Tennessee with which to make the settlement of said R. R. Co.'s debt to the State?

A. He probably did.

39 x Q. Did he not apply to you to buy or get $1,250,000 of the State bonds from you as agent for a Mr. Smith?

A. I think he did.

30 40 x Q. While the officers of the Mississippi Central road were negotiating for State bonds to settle the debt of that road to the State of Tennessee, did you not have personal interviews with Mr. Fish, Secretary of said Company, and speak approvingly of this settlement then in process of being made?

A. I have no recollection of anything of the sort.

41 x Q. Did you ever present any coupon attached to or from a bond of the State of Tennessee to any railroad company and demand payment of the
31 same?

A. I have never yet done so.

42 x Q. While the several railroads of Tennessee were purchasing bonds of the State with which to settle their debt to the State under the acts of 1869 and 1870, did you ever object, protest against, or oppose in any way said settlements. I include in this interrogatory those of the Memphis and Charleston, the Mississippi Central, and Mississippi and Tennessee railroad companies?

32 A. Not that I recollect of.

Re-direct examination by MR. ANDREWS:

43 Q. State when, where and to what railroad officials of Tennessee you first expressed your assertion of the lien on the railroads belonging to Tennessee bonds?

A. I think first about 1872 or '73 to H. D. Newcomb, 33
President of the Louisville and Nashville R. R., in Louisville ; I expressed the opinion that the Louisville and Nashville Company was liable for the outstanding Tennessee State bonds issued to it, and that the title of the Louisville and Nashville Railroad Company to the Memphis, Clarksville and Louisville Railroad Company I was afraid was not good, the outstanding Tennessee State bonds issued to it being not all paid.

34

(Respondent's counsel objects to the answer as hearsay, and wholly incompetent and illegal.)

44 Q. Who else, if anybody, was present at this interview ?

A. After discussing the matter some time with Mr. Newcombe, he called in the attorney of the company, Russell Houston, I think, who produced what purported to be foreclosure proceedings 35
against the Memphis, Clarksville and Louisville Company, through which he claimed the Louisville and Nashville had derived a good title. I pointed out the fact that the debt had not become due, and that there was no provision for foreclosing until maturity.

(Respondent's counsel objects to the answer as hearsay, and totally incompetent and illegal.) 36

45 Q. Have you not at all times appropriate insisted to the railroad officials of Tennessee with whom you came in contact that the bonds issued to their respective roads were first liens thereon, and that they would in all probability be sued for the enforcement of those liens ?

37 (Objected to as incompetent and irrelevant and leading.)

A. I have repeatedly told officers of Tennessee roads that I believed Tennessee State bonds issued to them to be a first lien, and that they would probably be sued on account of them.

(Objected to as incompetent.)

38 46 Q. Have you not stated to the same effect to R. T. Wilson several years ago?

A. I have emphatically said so to Mr. Wilson, but how many years ago I can't say.

47 Q. Were you present at some conferences between railroad officials and bondholders in New York City, at the time of the special session of the Legislature of Tennessee, in 1877, at which conferences R. T. Wilson was also present?

A. I have no recollection of any conferences be-
39 tween railroad officials and bondholders at that time?

48 Q. Were you present at a meeting about that time at which R. T. Wilson read a statement?

A. I was during part of the time.

49 Q. Was not the subject of these railroad liens discussed at that meeting?

A. I think not.

Re-cross examination by Mr. HUMES:

40

50 x Q. Do you now consent to answer cross-question 31?

A. Same answer as yesterday. I will state the terms. The terms upon which the suits are to be prosecuted are: The bondholders wishing to join shall contribute five dollars in cash for every lien bond, and also one past due coupon from each bond

of that description. Every bondholder desiring to 41
unite is required to sign this agreement.

(Agreement produced. Marked in evidence "Respondent's Exhibit No. 7.—W.H. D.L., Sp'l Ex'r.)

(And also the plan upon which such agreement is based. Circular produced and marked "Respondent's Exhibit No. 8." W. H. D. L., Sp'l Ex'r.)
42

51 x Q. Have you stated fully the terms and stipulations of each and every contract and agreement which you have entered into with others to prosecute these suits?

A. I have stated fully the terms upon which the committee have agreed to prosecute these suits. The only agreement between them and the bondholders.

52 x Q. I repeat the question as not answered? 43

A. I want to know what you mean by prosecuting the suits?

53 x Q. I mean the conduct of the suits in the ordinary way suits are conducted by plaintiffs in Civil Courts?

A. That I don't understand either.

54 x Q. I repeat interrogatory 51. Have you stated fully the terms and stipulations of each and every contract which you have entered into with others to carry on these suits to a final hearing? 44

(Objected to because the witness has answered the question, because on a previous repetition the witness has asked for an explanation of its meaning, and because upon an explanation having been attempted the witness has stated that he did not under-

45 stand the explanation. Under these circumstances any answer is objected to.)

(Further objected to because counsel has stated that he has a copy of the contract he wishes to elicit, and could therefore afford the explanation the witness desires.

A. I have stated fully the terms upon which we have agreed to carry on these suits to a final hearing.

46

(It is agreed that the question shall be certified to Judge Blatchford for decision.

Adjourned to further notice.

NEW YORK, October 23, 1879.
11 A. M.

Present—Counsel as before.

47 PETER GEDDES re-called and examined by Mr. ANDREWS:

55 Q. At the time you wrote the letters to James D. Porter and James L. Gaines, referred to in your deposition, were you an owner of non-lien bonds of the State of Tennessee?

A. I was an owner at that time of what I believed to be non-lien bonds.

56 Q. Is the Mr. Smith of your firm of Geddes &
48 Smith Mr. George Smith of London?

A. He is not.

Cross-examination by Mr. HUMES:

57 x Q. In your propositions to the Governor and Legislature of Tennessee for a compromise, and in your letters touching the same subject, did you confine the compromise, or express any limit to the

bonds not issued to railroads. I mean the proposi- 49
tion of compromise which is exhibited with your deposition now being taken, and which proposition is dated February, 1877?

A. No.

58 x Q. Did you not approve of and sign the subsequent proposal for reducing the principal?

A. I think I did not sign it, I may have subsequently approved it.

59 x Q. In any correspondence or action of yours to produce a compromise, did you limit the terms 50
to bonds not issued to railroads?

A. I think not.

60 x Q. Did you not, when you signed the proposition above mentioned, dated February 15, 1877, and your correspondence herewith filed, with Governor Porter and James L. Gaines, own Tennessee bonds issued to railroads, as well as those not issued?

A. I believed I owned some bonds issued to rail-
roads. 51

61 x Q. Have you entered into any agreement or contract touching the prosecution of these suits with any persons other than the contracts you have already exhibited with this deposition?

A. Do you mean the contract with our counsel?

62 x Q. I mean with them or any other person or persons?

(Objected to by counsel for complainants as to that portion which refers to counsel as 52
immaterial and irrelevant, and any answer objected to in that respect until the Court can rule on the competency of the evidence.)

A. I decline to answer as to counsel. We had no agreement with any other person or persons other than that exhibited.

53 63 x Q. You say in your last answer that you have no agreement except those exhibited with any other person or persons; do you use the word person or persons in the above answer as excluding or including your counsel?

(Objected to upon the ground that the witness had declined te answer as to counsel.)

54 A. I decline to answer as to counsel, and as to other persons I have already answered.

(Counsel for defendants reserve the right to submit to the Court the competency of the questions declined to be answered by this witness.)

P. GEDDES.

Subscribed and sworn to before me, this 23d day of October, A. D. 1879.

55 WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee to take the testimony and proofs of both parties in the above-entitled suit in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my
56 office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly sworn in the above-entitled suit and examined, and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence, and that the exhibits hereto annexed and marked Complainant's Exhibits No. 1, and Respondent's Exhibits Nos. 1, 2, 3, 4,

5, 6, 7 and 8, were introduced in evidence in said 57
cause during the taking of said deposition.

Dated Oct. 23, 1879.

WILLIAM H. DELANCEY,
Special Examiner.

58

In the case of CALVIN AMORY STEVENS, *et al.*, on behalf of the holders of Internal Improvement Bonds, of Tennessee, issued to the Memphis & Charleston Railroad Company,

versus

59

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, *et al.*

IN THE UNITED STATES CIRCUIT COURT,

For the Western District of Tennessee,

I hereby certify that there were produced before me during the taking of the deposition of Peter 60
Geddes in this cause, six (6) Tennessee bonds, each bond being for the principal sum of one thousand dollars, and bearing the impression of the great seal of the State of Tennessee on the face thereof.

A true and exact copy of one of said bonds is as follows:

61 COMPLAINANT'S EXHIBIT No. 1.

W. H. D. L., Spl. Exr.

M. UNITED STATES OF AMERICA. M.

No. 419. B.

STATE OF TENNESSEE.

Know all men by these presents, that the State of Tennessee acknowledges to owe to
62 or order, one thousand dollars, lawful money of the United States, which sum the said State promises to pay in the City of New York, on the 1st day of January, 1892, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the presentation of the coupons thereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of
63 the General Assembly of said State, passed at its session of 1851-2.

In witness whereof I, W. B. Campbell, Governor of said State, have hereunto signed my name and caused the same to be countersigned by the Secretary of said State, and the Great Seal of said State to be hereto affixed, at Nashville, this
64 1st day of January, 1852.

W. B. CAMPBELL, *Governor.*

W. B. A. RANNEY, *Secretary of State.*

$1,000. $1,000.

The other five (5) of said bonds are of like tenor in all respects with the foregoing, except that they

differ in their numbers, being numbered as follows: 65
491, 673, 692, 1,559, 3,409.

All of said bonds are dated on the 1st day of January, 1852, except number 1,559, which is dated on the first day of January, 1855, and number 3,409, which is dated on the 1st day of January, 1856.

Nos. 491, 673, 692, are signed W. B. Campbell, Governor; W. B. A. Ranney, Secretary of State.

No. 1,559 is signed Andrew Johnson, Governor; W. B. A. Ranney, Secretary of State.

No. 3,409 is signed Andrew Johnson, Governor; 66
F. N. W. Benton, Secretary of State.

All of said bonds having thirty-two coupons attached to each bond.

The last coupon falling due is in all respects, except as hereinafter stated, similar and like unto the following true and exact copy thereof:

$30. $30.

The Treasurer of the State of Tennessee will pay the bearer thirty dollars, in the City of New York, 67
on the first day of July, 1876, being the semi-annual interest then falling due on bond No. 419.

ARTH. R. CROZIER, *Comptroller.*

All the coupons attached to bonds numbered 491, 673, 692, 1,559, 419, are signed Arth. R. Crozier, Comptroller.

Coupons attached to bond No. 3,409, are signed by J. C. Luttrell, Comptroller.

There are seven overdue coupons upon each of 68
the afore-numbered bonds, the first coupon thereof having fallen due on the 1st day of July, 1876. The other six of said coupons fall due at intervals of six months from the date of the coupon above mentioned.

All the aforesaid bonds with the coupons attached thereto, were left by the witness, Peter Geddes, for

69 inspection by me and the solicitor for the respondents then and there present, and were inspected by me and by him.

The endorsements on said bonds are as follows: on bond No. 419, "registered under 9th Section of Funding Act, approved May 17, 1873, Jno. C. Burch, Comptroller; Chas. N. Gibbs, Secretary of State."

				Audited Mar.	4,	1874.
	On bond No. 491,	same	"	"	"	
70	673,	"	"	Feb.	11,	"
	692,	"	"	"	21,	"
	1,559,	"	"	"	11,	"
	3,409,	"	"	Sep.	15,	1873.

In addition to the foregoing, the following endorsement is upon bonds Nos. 419, 491:

"Assigned and transferred by E. Cramer to the State Treasurer of the State of Wisconsin, in trust for the State Bank of Wisconsin.

71 Madison, Apr. 14th, 1853.

J. S. BAKER,
Bank Compt'r.

CHAS. T. KVELIN,
State Treasurer.
By CARL HABICH,
Asst. State Treasurer.

WILLIAM H. DE LANCEY,
Special Examiner.

72

RESPONDENT'S EXHIBIT No. 1. 73

W. H. D. L., Spe'l Ex'r.

NEW YORK, February 15, 1877.

To his Excellency JAMES D. PORTER,

Governor of the State of Tennessee.

Sir: On the 26th of December last, we had the honor of addressing to your Excellency a letter on the disordered condition of the public debt of the State of Tennessee, of which we are owners and the 74 representatives of owners of a large amount, and of conveying to you in same an expression of our confidence and belief that a permanent adjustment of the debt on a basis equitable to the holders of it and honorable to the State was practicable, begging that your excellency would recommend to the Legislature to appoint a commission to come to this City and confer with the creditors of Tennessee, with the view of bringing about such an adjustment. 75

We now have the honor to acknowledge the receipt of communication to us severally, addressed by your Excellency, accompanied by a resolution of the Legislature of Tennessee, approved on the 27th January ultimo, in which the holders of the public debt of the State are invited to submit to the General Assembly, through your Excellency, propositions for an adjustment of said debt, and at the same time to most respectfully express to your Excellency, and through you to the Legislature and 76 people of Tennessee, our great regret and disappointment that the Legislature did not think it expedient to appoint a commission to come to New York to confer with the creditors of the State, for the purpose mentioned; because such a conference we still believe would have developed a plan of adjustment that, while doing equity to the

77 creditors of Tennessee, would, by bringing her revenues and finances into harmonious and easy working order, restore her credit and again place it firmly on the high and solid ground it once occupied, offer encouragement to capital to seek employment within her borders in the development of her unsurpassed natural resources, and result in the greatest good to the people of the State generally, enabling them to transmit to posterity together with the good name which they had inherited, a heritage
78 far richer than had come down to them from their fathers.

We have carefully considered the liabilities and resources of Tennessee; we know that her great wealth of mine, field and forest are only in the infancy of development.

We know also how much the future development of the vast but now comparatively latent resources of the State depends upon a restoration of her credit and the re-establishing of her
79 financial system upon a sound basis; and knowing, moreover, that public creditors of the State would be benefited, in common with the people of Tennessee, by a restoration of her credit and by giving her a healthy fiscal system, we beg leave to submit to your excellency, and through you to the legislature and people of Tennessee, the following propositions as to what can be done by the people of Tennessee, with the co-operation of their public creditors, for the immediate adjustment of their
80 public debt and for its ultimate extinguishment in an easy, gradual and feasible way—a way which, if adopted, we feel very sure we hazard nothing in saying will be productive of the most beneficial results to the people of Tennessee.

It will be observed how essential to the success of the plan we submit for present adjustment and ultimate extinguishment of the debt will be the cor-

dial co-operation of both debtor and creditor, and 81
to what extent we propose that the public creditors of Tennessee shall contribute to its success.

We propose:

1st. That the revenue laws of the State shall be amended so that the collection of taxes may be assured at the time or times when they become due, and that at the smallest possible cost to the tax-payers.

82

2d. That the reforms proposed and recommended to the legislature by your excellency, in regard to the cost of county criminal prosecution, be enacted into a law.

3d. That the expense of the State Government be reduced to as low figures as is consistent with the maintenance of its dignity.

4th. That the present rate of taxation be maintained, and that the other sources of revenue be not diminished. 83

5th. That the State levy annually a special tax of one mill on the dollar of taxable property, the proceeds of which in every year, together with any surplus revenue, shall be used in the purchase, cancellation and destruction of the new issue of bonds which it is proposed herein to issue for existing bonds snd past-due coupons of July 1, 1877. 84

6th. That the Legislature pass a law authorizing the funding of all outstanding bonds of the State, of all past due coupons thereon, and of the coupons which will fall due on July 1, 1877, into new bonds of the State, bearing date July

85 1, 1877, and having fifty years to run to maturity, bearing interest for a period of five (5) years from their date at the rate of three (3) per cent. per annum; for a second period of five (5) years thereafter, interest at the rate of four (4) per cent. per annum; for a period of five (5) years from the termination of the last mentioned period, interest at the rate of five (5) per cent. per annum, and thereafter and until maturity and payment, interest at the rate of six (6) per
86 cent. per annum; interest on each bond to be payable semi-annually, on January 1 and July 1, in every year from and after its date, and the coupons evidencing it to be receivable by the State for all taxes and dues payable to the State, and bonds to be $100, $500, and $1,000 each.

The debt of the State, as may be readily ascertained, will be within her control and easy power to
87 manage and protect from the start, if, as we sincerely hope may be the case, the plan herein outlined is availed of, and we may add that our aim has been to make it within the easy power of the people of Tennessee to avail of it.

As will be perceived by your Excellency, the Legislature and people of Tennessee, the public creditors of Tennessee in acquiescing in this proposed plan of co-operation between them and the people of Tennessee for restoring the credit of the State and ulti-
88 mately extinguishing her public debt, will voluntarily relinquish about seven millions of their claims against Tennessee, an amount equal to about one-third of the entire amount of the public debt.

On the other hand we propose that the people of Tennessee adopt the easiest and simplest mode which we can conceive of for the ultimate extinguishment of their entire public debt, a mode which, while it will

only produce the very moderate annual sum of $268,- 89
000 at the present low valuation of property, will, by its silent but sure work, pay off the debt completely, while by its operation it will so reduce the amount upon which, under this plan, interest will require to be paid, that at the expiry of each period for an advance in the rate, the reduced amount for which interest will have to be provided, and the certain increase in the value of property, will together work to make the present rate of taxation quite sufficient to meet all demands upon the 90
State.

During the first fifteen years of the currency of the proposed new issue of bonds, we estimate that the proposed special tax for its ultimate payment will pay off between five and six millions of dollars in bonds, allowing 20% of the tax for its collection, and the expense of buying bonds with the proceeds.

When it is considered that this can be accomplished at so small an annual charge to the people 91
of Tennessee, and that such certain beneficial results to them are sure to follow, we have the greatest confidence that their loyalty to Tennessee, their determination to preserve and perpetuate her honor and good name will be sufficient to induce them to make the manly effort to that end of unitedly raising a one-mill tax on their property annually.

We are quite well aware of the partial failure of the crops in Tennessee in the years 1873 and 1874, and of the depressed condition of business, and of 92
all industries in the State, but throughout the country there exists the same depression—stagnation.

In full recognition of this depression and stagnation, which there is every reason for believing will soon give place to better times, we have in the plan herein submitted for a re-arrangement of the finan-

93 ces of Tennessee made her obligations within her means and evident ability to meet now.

With the existing rate of taxation, and the proposed special tax for the extinguishment of the debt, which together will make a five-mill tax, it may not be improper to compare the rate of taxation in the States which border on Tennessee:

In Arkansas	the rate is	10	mills,
Mississippi	"	$6\frac{1}{2}$	"
Alabama,	"	7	"
94 Georgia,	"	5	"
North Carolina	"	$3\frac{3}{10}$	"
South Carolina	"	12	"
Virginia	"	5	"
Kentucky	"	$4\frac{1}{2}$	"

In conclusion, we beg to express to your Excellency, and through you to the Legislature and people of the great State of Tennessee, our confidence that all will unite with us in this effort to make it 95 possible to avail of the proposed co-operation of the creditors of Tennessee to bring about so desirable a result as the re-establishment of the credit on a plan so favorable as we have herein outlined, and we have the honor to be

Your obedient servants,

GEORGE SMITH, of London, England,
by Geddes & Smith, agents, &c.
BROWN BROTHERS & Co., Agents.
96 DREXEL, MORGAN & Co., Agents.
E. D. MORGAN & Co.,
Agents and owners.
JAMES G. KING'S SONS,
as agents for bondholders.
WARD, CAMPBELL & Co., Agents.
G. W. STANTON, Jr.
P. GEDDES.

We concur in the foregoing. 97

CALVIN STEVENS,
by C. Amory Stevens, att'y.
J. V. CLARK, Pres't, Chicago,
per Thos. G. Robinson.
WM. G. CREAMER, 96 John st.
CHAS. J. HINE, New York City.
A. ISELIN, as Att'y, New York.
W. R. JENKINS, New York.
98
Mrs. JOSEPHINE S. NEWCOMB,
by H. Pomeroy, Att'y,
54 Broad street.
GEORGE WATSON, Chicago,
per James H. Smith.
JNO. H. MACEY, Pres't.
HENRY E. JOHNSTON, Baltimore.
JOHNSTON, BANKHEAD & Co.,
Baltimore, Agents.
99
THOMAS F. ANDREWS, Baltimore.
M. ABRAMS, Baltimore.
WILLIAM DE GORY, Baltimore.
SAMUEL L. PETERS, Baltimore.
WILSON, COLSTON & Co., Agents,
Baltimore.
JOHN S. GITTINGS, Baltimore.

RESPONDENT'S EXHIBIT NO. 2.
W. H. D. L., Sp'l Ex'r.

100

NEW YORK, Feb. 23d, 1877.

His Excellency,
JAMES D. PORTER,
Governor of Tennessee:

SIR: We beg leave to call your attention to the enclosed telegram to the *New York Herald*, from

its Nashville correspondent, cut from this morning's issue of the *Herald*, and to confirm our dispatch to you of this morning by telegraph in relation thereto, as follows:

"Proposition from large and influential New "York and Baltimore bondholders expressed to "you on Wednesday, and should be received to-"day. Bondholders here know nothing whatever "of a meeting or of resolutions reported in *Herald* "to-day as having been sent to you, and by you "transmitted to legislature, with a special message.

"This may be a movement designed to destroy "or embarrass any proper adjustment."

No meeting of bondholders of Tennessee, so far as we are aware or can ascertain, has either been called or held in this city. Neither have we heard at any time of a purpose to call or hold such a meeting, nor of a purpose or desire on the part of real holders of Tennessee bonds to take any action whatever, outside of what has been taken through and in the communication which we, with others, had the honor to address to you under date the 15th current. It could hardly be possible to call or hold a meeting here of Tennessee bondholders without our knowing or hearing about it. Such being the case, we thought it our duty to telegraph to your Excellency as we did this forenoon. It occurred to us that possibly an attempt to mislead your Excellency and the people of Tennessee as to the sentiments and wishes of the real holders of the indebtedness of the State had been made, akin to the attempt made last year to create a false impression, through a letter to the State Treasurer, to which the name of one of the Astors had been forged.

The debtors of the State, with all of which she has been extremely liberal, even to the injury of her own credit many here believe, are supposed to

be antagonistic to the consummation of any plan for 105
the restoration of Tennessee credit now, the complete prostration of which, it is supposed, would be for their immediate pecuniary advantage. This view, if entertained by any of the debtors of the State, is unsound. For, with every decline in the credit of the State, their credit inevitably suffers.

But, to remove this cause of a real or apparent antagonism between the debtors and creditors of the State, and also to remove—which is of immediate and great importance—an 106
obstacle which is calculated to prevent or, at least, hinder the people of Tennessee and their public creditors from coming to an agreement with respect to what each should do to restore the credit of the State, and place it on a solid basis, we would respectfully suggest to your Excellency that the debtors of the State be required, within a reasonable time, say by or before July 1st, 1877, to pay off every obligation due from them to the State as now they may do, after which time only such ad- 107
vances as were specifically made to each to be receivable in payment or cash; this is to apply to principal and interest.

We submit to your Excellency whether there would be any hardship or injustice in requiring this, and assure you that the creditors of the State would regard such a step as one taken in the right direction; and

We remain

Your Excellency's Ob't Serv'ts, 108

GEDDES & SMITH.
E. D. MORGAN & CO.

The views above given, we beg to add, are for your own personal consideration.

G. & S.

109 I, WILLIAM H. DELANCEY, special examiner, do hereby certify that an original letter, of which the foregoing is a true and exact copy, was produced before me on the examination of Peter Geddes, a witness produced on the part of the complainants, and was submitted to him and acknowledged by him, as appears in his deposition, to which this is annexed as an exhibit. I further certify that the foregoing copy is a copy of the whole of such original letter.

110 New York, October 13th, A. D. 1879.

WILLIAM H. DELANCEY,
Special Examiner.

RESPONDENT'S EXHIBIT No. 3.

W. H. D. L., Sp'l Ex'r.

111 (Private.) NEW YORK, Aug. 1, 1877.

Hon. JAMES L. GAINES,
Comptroller,
Nashville.

Dear Sir :—I think that I may now safely say to you confidentially that the parties in interest will be prepared to pay off the debts of the Mississippi Central to your State just as soon as it is safe for them to do so.

I was amused when I read in the American news-
112 paper the other day the very brief notice of the payment of the debt of the Memphis and Charleston road to the State, which it published. A stranger would conclude that it was published solely to account for your being in New York, about which the public might be concerned, to assure the people of Tennessee that you were not here to pay off the State debt, or anything of that kind.

I have not yet heard from Mr. Smith, and am 113
therefore not able to indicate what view he may take of the conditions upon which Governor Porter says he will call an extra session of the Legislature. I have, however, not changed my own views as to what should be done, but I am more firmly convinced than ever that the proposition of the bondholders should be accepted, or one its equivalent, which I think might be gotten up, offering to settle at say 75 % of principal and interest in 6% bonds, coupons receivable for all taxes and dues to the State. If 114
any hope were held out that a settlement can be effected at the equivalent of our proposition, say 75c., I would do my best to get all the principal bondholders to make a proposition to settle at that, and I think that with careful handling it could be carried. Of course there are always some who hold back, but I think that the great majority would take 75% under the name of the equivalent of their proposition already made.

The debts of the railroads to the State may now 115
be regarded as practically settled. What remains is simply a question between debtor and creditor.

Freed from the complications which grew out of these railroad debts the discussion of the debt question will be very clear and simple henceforward.

If a few of you men of influence and character would unite in an effort to bring about a compromise on the basis of 75 % I think it could be effected satisfactorily to all, while it is very doubtful if an acquiesced in settlement at a lower figure would 116
ever be regarded as other than a forced one by the public and the bondholders.

The intervention of the so-called arbiters of the Clearing House was the most unfortunate thing that could have happened.

Personally I have worked hard to save the remnant of Tennessee's once good credit, and I make

117 this last effort to complete the job. If it fails, let it be so. Posterity will ever regret a blunder made now.

If you think so advisable you may convey to the Governor at your convenience the substance of what I have said, and let me know what he may have to say in reply.

Very truly yours,
P. GEDDES.
P. O. Box 936.

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RESPONDENT'S EXHIBIT No. 4.

W. H. D.L., Sp'l Ex'r.

NEW YORK, Aug. 23, 1877.

JAMES L. GAINES, Esq.,
Comptroller.

119 *Dear Sir :*—I duly received your esteemed favor of the 8th current.

Since then I learn that the Mississippi and Tennessee Railroad Company have voted to pay off their debt to Tennessee. This practically settles up all advances made by the State to railroad companies, and reduces the whole State debt question to one between the people of Tennessee and the investors in their public debt. What the latter will agree to do I can not say. They may or may not adhere to
120 their pro position of last February.

If the people of Tennessee under any circumstances are liable to do anything disgraceful in regard to their public debt, or permit anything of that kind to be done, of which you seem to entertain fears, should a settlement not be come to this year, and the debt question become one of the issues in the State canvas of next summer, the inquiry forces it-

self upon the bondholders, of how much value 121
would the reduced debt of such a people be to the holders of it?

This is a very serious question in view of the fears you express, and of what I will now only characterize as the extraordinary legislation of last winter. I shall be happy to hear from you in reply at your convenience.

Mr. Smith has been travelling since the beginning of July, and hence we do not hear from him.

I am, 122

Very truly yours,

P. GEDDES,

P. O. Box 936.

RESPONDENT'S EXHIBIT No. 5.

W. H. D. L., Spe'l Ex'r.

(Private.) NEW YORK, August 27, 1877. 123

HON. JAMES L. GAINES,

Nashville.

My Dear Sir: I have just had an interview with Mr. Osborne, who reports that in thirty days the parties in whose interest the Mississippi Central was bought in the other day will receive a confirmation of their purchase. It is quite well understood here that so soon as they can do so with safety, they will pay off the lien of Tennessee on the Miss. 124
Central, and that they now think they can safely pay it off sixty days hence.

There is thus little doubt that the last of Tennessee's advances to the railroads within her borders will be paid off early in the fall, thus freeing her and her creditors too, for that matter, from a very troublesome disorder.

125 Although you do not in your note of the 8th current give much reason to hope that a settlement of Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest citizens of Tennessee who must be still in the majority, would much prefer to pay the State debt *in full*, if some plan were submitted which would make it clearly possible for them to do so.

The outstanding bonds of Tennessee are mainly
126 held by investors, by trustees, and Trust Institutions. The "margins" of speculators in and out of Wall street have long ago disappeared, and the bonds upon which they were held been sold.

Now investors, and parties, and institutions holding in trust, prefer much any reasonable reduction of the rate of interest their investments will produce to a reduction of the principal.

For the past four years they have been receiving lower rates of interest and smaller dividends on
127 their investments than they had been accustomed to. Many of them, judging by the large subscriptions to government four per cents. recently, have come apparently to the conclusion that lower rates of interest than formerly prevailed will hereafter permanently prevail. This is the mood in which they now appear to me to be, and it has suggested the idea that advantage might possibly be taken of so favorable a time and circumstances by the friends of Tennessee to bring about a compromise
128 of the rate of interest on her debt which would enable her with ease to pay it all off.

I will not discuss her ability to pay her debt, but will assume it and pass on to my suggestion, which is as follows:

The State to issue new bonds for the principal and past due interest of her existing bonds, to bear interest at 4 (four) per cent. per annum, payable

semi-annually, January 1 and July 1, in each year, 129
coupons to be attached to the bonds representing each payment of interest, to be receivable by the State for all taxes and dues to the State, and to be free from taxation of any kind in the State. The bonds themselves to be payable fifty or one hundred years hence, and redeemable by the State at any time after six month's notice that the State is prepared to pay them.

The bondholders of Tennessee may object to making such a proposition of compromise; but if I get 130
from you and the Governor encouragement that if such a proposition were made by the holders of more than half the debt, it would be accepted, I will exert myself with Mr. George Smith and other well known large holders to make it.

Firmly convinced as I am that a settlement in full, if by any possibility it can be accomplished, will be of immense present and future advantage to Tennessee and Tennesseeans, I hope that you will induce Governor Porter and the other friends of 131
State credit to give my suggestion careful consideration.

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, and will, if necessary, go to Nashville for the purpose of an interview with the Governor and yourself.

If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can still be restored and her honest pride saved. 132

Let me hear from you on receipt and write further afterward.

Truly yours,

P. GEDDES.

125 Although you do not in your note of the 8th current give much reason to hope that a settlement of Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest citizens of Tennessee who must be still in the majority, would much prefer to pay the State debt *in full*, if some plan were submitted which would make it clearly possible for them to do so.

The outstanding bonds of Tennessee are mainly
126 held by investors, by trustees, and Trust Institutions. The "margins" of speculators in and out of Wall street have long ago disappeared, and the bonds upon which they were held been sold.

Now investors, and parties, and institutions holding in trust, prefer much any reasonable reduction of the rate of interest their investments will produce to a reduction of the principal.

For the past four years they have been receiving lower rates of interest and smaller dividends on
127 their investments than they had been accustomed to. Many of them, judging by the large subscriptions to government four per cents. recently, have come apparently to the conclusion that lower rates of interest than formerly prevailed will hereafter permanently prevail. This is the mood in which they now appear to me to be, and it has suggested the idea that advantage might possibly be taken of so favorable a time and circumstances by the friends of Tennessee to bring about a compromise
128 of the rate of interest on her debt which would enable her with ease to pay it all off.

I will not discuss her ability to pay her debt, but will assume it and pass on to my suggestion, which is as follows:

The State to issue new bonds for the principal and past due interest of her existing bonds, to bear interest at 4 (four) per cent. per annum, payable

semi-annually, January 1 and July 1, in each year, 129
coupons to be attached to the bonds representing each payment of interest, to be receivable by the State for all taxes and dues to the State, and to be free from taxation of any kind in the State. The bonds themselves to be payable fifty or one hundred years hence, and redeemable by the State at any time after six month's notice that the State is prepared to pay them.

The bondholders of Tennessee may object to making such a proposition of compromise; but if I get 130
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Firmly convinced as I am that a settlement in full, if by any possibility it can be accomplished, will be of immense present and future advantage to Tennessee and Tennesseeans, I hope that you will induce Governor Porter and the other friends of 131
State credit to give my suggestion careful consideration.

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, and will, if necessary, go to Nashville for the purpose of an interview with the Governor and yourself.

If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can still be restored and her honest pride saved. 132

Let me hear from you on receipt and write further afterward.

Truly yours,

P. GEDDES.

133 RESPONDENT'S EXHIBIT No. 6.

W. H. D. L., Spl. Exr.

NEW YORK, Aug. 29, 1877.

HON. JAMES L. GAINES,
Nashville, Tenn.:

My Dear Sir:—I thank you for your favor of 25th current, and for the information and suggestion therein communicated.

134 Seeing by the morning papers that the Governors were to meet yesterday at the Continental Hotel, Philadelphia, I telegraphed to Governor Porter there asking him where a letter would reach him to-day, and after hearing from him wrote him with a copy of my last letter to you, asking him to let me have the benefit of his views thereon in advance of his arrival here, and saying that if agreeable to him I would with pleasure call upon him when he comes to New York.

135 In case Tennessee wants to pay off her debt it will be of great advantage to her to arrange for a low rate of interest on it. Bonds bearing a low rate of interest can be with greater ease or at lower cost bought for a sinking fund than can bonds bearing full rates.

This is a point I had in view when we made our proposition of compromise, and one which I hope will have some weight yet with you.

Yours truly,

P. GEDDES.

136

I, WILLIAM H. DELANCEY, Special Examiner, do hereby certify that four original letters, of which the foregoing are true and exact copies, were produced before me on the examination of Peter Geddes, a witness produced on the part of the complainants, and were submitted to him and acknowledged by him as appears in his deposition to which they are

annexed as an Exhibit. I further certify that the 137
foregoing copies are copies of the whole of such original letters.

New York, October 13th, 1879.

WILLIAM H. DELANCEY,
Special Examiner.

RESPONDENT'S EXHIBIT No. 7.

W. H. D. L., Sp'l Ex'r. 138

To THE COMMITTEE OF TENNESSEE BOND-HOLDERS:

I hereby assent to the plans and conditions of the Committee's Circular of May 17th, 1879.

LIST OF BONDS.

COLOR.	LETTER.	NUMBERS.

139

140

141 RESPONDENT'S EXHIBIT NO. 8.—W. H. D. L., Sp'l. Ex'r.

OFFICE OF COMMITTEE OF
TENNESSEE BONDHOLDERS,
No. 31 Nassau Street.

P. O. Box 936. NEW YORK, May 17, 1879.

To the Holders of Tennessee Bonds:

In our last circular we informed you that the committee was considering the best means for enforcing
142 our first mortgage liens against the railroads in Tennessee. After full deliberation, with advice of counsel, and with the approval of the following prominent houses interested: Brown Brothers & Co., Maitland, Phelps & Co., Ward, Campbell & Co.; and of the Presidents of the Seaman's Savings Bank, and the Globe Mutual Life Insurance Co. of New York; and of large individual holders in New York, Baltimore, Philadelphia and Chicago, we have decided to adopt the suits lately instituted by
143 Mr. C. Amory Stevens. Prompt action on the part of the bondholders will enable us to bring these suits to trial during the ensuing summer.

It may be well for us to give some of the considerations that make us confident of a successful enforcement of the lien conferred on our bonds by the distinct language of the Tennessee Statutes. While Tennessee bonds of the new issue were being offered for sale in behalf of the railroads of the State, S. Watson, "agent for the State of Tennes-
144 see," addressed the following argument to the public, which was printed in pamphlet form in 1868:

"The important question for the bondholder now "is, What security have I for the payment of the "principal and interest of my bond? The State "debt proper is only about four millions. The "railroads and all their rolling stock are mortgaged "to the State to secure the *payment of bonds*

"*loaned.* This mortgage, as bondholders must 145
"know, enures to their benefit. For the payment
"of twenty-nine million bonds, which will be the
"entire amount of bonds issued to the roads, in-
"cluding those that may be issued under the recent
"Act of the Legislature, *the bondholders have*
"*as security* roads which, when completed, will be
"nearly two thousand miles in length, and which
"will be worth fully seventy million dollars. In
"addition to that, they have the whole resources
"of the State solemnly pledged to them." 146

Again, in 1868, when the Legislature of Tennessee sought to impair our securities, Gov. Brownlow, then chief executive, sent a message to that body remonstrating against the proposed measures in the following emphatic language:

"The State, in point of honor and fact, holds the
"lien in a fiduciary capacity. She holds it *in trust*
"for the benefit of the bondholders. She honor-
"ably has no right to abandon it or surrender it to
"the companies. She ought not to prove faithless 147
"in this *trust*, but maintain and execute it as the
"bondholders understood it and as the people of
"the State understood it. The bondholders are in-
"terested in these resources to pay the bonds they
"hold, and the people are interested in them to see
"that they are not to be taxed to pay interest or
"principal of bonds for which the railroads are
"pledged by the terms of the law."

The assurance of our rightful legal claims against the railroads is strongly fortified by the following 148 facts:

In April, 1878, the committee addressed a circular to the bondholders notifying them that it was about to enforce this lien. We petitioned to be heard in the Mobile and Ohio case then pending on appeal before the Supreme Court of the United States. In that suit the question whether or not

149 the holders of Tennessee bonds had a first mortgage lien upon railroads in that State, was clearly presented. The cause was fully argued by several counsel for the railroad company as well as by our counsel, and the Court took the case under advisement. Some time after, while we were confidently awaiting a decision in our favor, we were surprised to learn that the railroad company had settled the case with the party to the record in that suit—that stipulations had been filed in the office of the Clerk
150 of the Supreme Court—that copies had been sent to the several Judges of the Supreme Court—and, in short, that everything had been done by the railroad officials which it was possible to do to forestall a decision in the case. As we were not actual parties to that cause, we could not control the matter in any way so as to prevent a settlement. But, surely, we could not require any stronger evidence that the railroad companies were convinced of their own defeat. Otherwise they would have gladly
151 welcomed a decision which would have relieved their property from the burden of this lien, and would have done everything in their power to have secured a final adjudication in their favor instead of preventing a decision.

We call your special attention to the accompanying opinion of Mr. Charles O'Conor. It was given under a deep sense of moral responsibility in course of advice sought by a bondholder to enable him to determine whether or not to embark in a litigation
152 against the railroads. A letter signed by Messrs. Evarts, Southmayd & Choate, in which it is stated that they have not time to prepare an opinion against us, has been circulated in the interest of the railroads. That letter bases its conclusions on the Minnesota case, which, we are informed by Mr. O'Conor, bears in our favor so far as it is at all applicable to the Tennessee case. It is sufficient to

add that Mr. Southmayd, of the above firm, urged, 153
before the Supreme Court, that same decision in the Minnesota case as a precedent in favor of his clients; but the effect was not convincing enough to induce those clients to refrain from a settlement of the case as before stated.

We append a list of roads on which Tennessee State bonds are first mortgage liens, and the amount of bonds outstanding against each road.

East Tennessee, Virginia & Georgia Railroad, leased lines and branches:		154
East Tennessee & Georgia Railroad	$614,000	
East Tennessee & Virginia Railroad	1,218,000	
Memphis & Charleston Railroad	830,000	
Cincinnati, Cumberland Gap & Charleston Railroad	350,000	
East Tennessee & Western North Carolina Railroad	34,000	
Total	$3,036,000	155

Louisville & Nashville Railroad Company, and purchased and leased lines:		
Main Line	$ 298,000	
Memphis, Clarksville & Louisville Railroad	791,000	
Memphis & Ohio Railroad	1,176,000	
Tenn. & Ala. R. R., Nash. & D. R. R.,	468,000	
Cent. Southern R. R., Nash. & D. R. R.,	362,000	156
St. Louis & South-Eastern Railroad Company, on account of Edgefield & Kentucky Railroad	645,000	
Total	$3,740,000	

157 Nashville, Chattanooga & St. Louis Lines:

Nashville & Chattanooga	$ 114,000
Nashville & North-Western	1,385,000
Winchester & Alabama	457,000
McMinnville & Manchester	356,000
Total	$2,312,000
Mobile & Ohio Railroad	953,000
158 New Orleans, St. Louis & Chicago Railroad on account Mississippi Central and Tennessee Railroad	480,000
Knoxville & Ohio Railroad Company on account of Knoxville & Kentucky Railroad	514,000
The above amounts and some issues to smaller roads make an aggregate of railroad issues made by the State of Tennessee, and which are still outstanding	11,647,000
159 On which there is accrued 23 per cent. interest	2,678,810
Total due	$14,325,710

Bondholders will please note that "New" bonds, issued to Tennessee railroads, and "Funding Series" bonds, not included in the above list, issued in payment of interest which accrued on railroad bonds under the Funding Acts of 1866, 1868 and 1873, are also statutory liens upon the railroads.

160 The members of the committee are owners to a large amount of bonds that are not liens on the railroads, which they do not propose to fund into the 50 and 4 per cent. bonds offered. They believe that the enforcement of the railroad liens will bring about a much better settlement than is now proposed. It is our duty to inform you that the legality of the proposed issue of the new 4 per cent. com-

promise bonds is already questioned in Tennessee, 161
for want of sufficient acceptances to authorize the submission of the proposed settlement to popular vote, as required by the Act of the last General Assembly.

Holders of North Carolina State bonds, issued in aid of the North Carolina Railroad Company, will recollect how that State made an unsuccessful attempt to deprive such bondholders of the lien originally intended for their security. A like attempt 162
in the State of Indiana, in the case of the Wabash and Erie Canal, was also unsuccessful, and the lien decided in favor of the bondholders.

Bondholders wishing to secure the benefits resulting from this litigation can do so on the following conditions, to wit: by depositing with the committee five dollars per lien bond in cash, and one past due coupon from each bond of that description. This will be required to defray the necessary costs and expenses of the litigation. In no event will the 163
bondholders be called upon for any further assessment, nor do they incur any personal liability by uniting in this plan. Should any surplus funds remain in the hands of the committee after all expenditures have been provided for the same will be returned to bondholders *pro rata*. Those who do not comply with the aforesaid conditions will be excluded from the benefits derived from the action of the committee. A certificate will be issued to each assenting bond, entitling it to any and all advantages 164
resulting from these legal proceedings, and specifying the railroad company bound for the payment of the bond. An arrangement for calling these certificated bonds for dealings in them on the New York Stock Exchange will be made.

When it is considered that the enforcement of

these liens should make the great mass of the internal improvement bonds worth par and accrued interest, or 123 per cent., the advisability of the course which we have adopted cannot be reasonably doubted. Your signature to the enclosed assent, stating color, number and serial letter of each of your bonds is requested before June 10th. Upon receipt by the committee of the assents of a sufficient number of bonds, the holders will be notified of the issue of the certificates to be attached to the lien bonds. We propose to engage as counsel Chas. O'Conor and E. L. Andrews, of New York, and George Hoadly, of Cincinnati, to be assisted by competent counsel at Memphis, Nashville, Knoxville and Louisville.

Committee of Tennessee Bondholders.

EUGENE KELLY,
OF EUGENE KELLY & CO.

JOHN T. TERRY,
OF E. D. MORGAN & CO.

JAS. G. K. DUER,
OF JAMES G. KING'S SONS.

PETER GEDDES,
OF GEDDES & SMITH.

R. S. MORAN,
OF 107 EAST 29TH ST., N. Y.

C. AMORY STEVENS,
Treasurer.

THOMAS G. ROBINSON,
Secretary.

Deposition of George Arents.

CIRCUIT COURT OF THE UNITED STATES,

1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston Railroad Company,

vs.

THE MEMPHIS & CHARLESTON RAILCOMPANY *et al.*

2

Testimony and proofs for final hearing on the part of the complainants in the above entitled suit, taken under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein.

3

NEW YORK, April 8, 1880.

Present.—Mr. E. L. ANDREWS,
For Compl't's,
Mr. C. H. TWEED,
For Respd't's.

4

GEORGE ARENTS, a witness produced on the part of the complainants, being first duly cautioned and sworn in the above-entitled suit to testify to the

truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct examination by Mr. ANDREWS:

1 Q. Please state your name, age, residence and occupation?

A. George Arents; age 44; residence New York; occupation broker.

2 Q. Have you been a purchaser of Tennessee bonds?

A. Yes, from 1866 to 1879.

3 Q. In purchasing Tennessee bonds, have you selected them according to their numbers?

A. Yes, sometimes.

4 Q. Have you selected the numbers in reference to their issue to particular Railroads?

A. Yes, at one time.

5 Q. How many bonds have you purchased in reference to their liens upon Railroads?

A. In this instance that I refer to about $100,000.

Cross-examination by Mr. TWEED:

6 x Q. When did you purchase these bonds you have spoken of?

A. I think in the year 1871-2.

7 x Q. Of whom did you purchase them?

A. We bought them of brokers at the board, in the regular way, and when the bonds were delivered we selected certain numbers and sold others, as occasion arose.

8 x Q. The bonds that you bought you bought at the current market rates for Tennessee State bonds, at the time of purchase?

A. Yes.

9 x Q. Of course you did not at the time of

making those purchases stipulate for bonds of cer- 9
tain numbers, but you took the bonds that the sellers delivered under their contracts without regard to their numbers, dates or purposes for which they were issued?

A. When we bought "old bonds," we had to take "old bonds" that were a good delivery on the exchange of any numbers, and at any time when we bought "new bonds" we had to take new bonds of any numbers that were a good delivery. There were some five per cent. bonds that were not a good de- 10
livery unless specially dealt for.

10 x Q. Did or could you know anything about what the numbers of the bonds which you bought would be until they were delivered to you?

A. No.

11 x Q. When did you get the list of numbers by which you determined which bonds should be retained and which sold?

A. We got it from Nashville; I don't recollect whether from a broker or from a private party; it 11
was a written list that purported to be a statement of all the bonds issued prior to the war, but it does not seem to be signed by anyone; it purported to contain the numbers and letters of the bonds issued before the war.

12 x Q. Did you tell any of the parties from whom you purchased bonds that you intended to make any such selection?

A. No, of course not.

13 x Q. After you had made the selection did you 12
not sell the bonds that were left at the current market rates at the time for Tennessee State bonds?

A. Yes, sir, I did.

14 x Q. So that you got as much for the residuum as you would have got for any Tennessee State bonds?

A. Yes.

13 15 x Q. What did you do with the bonds you culled out and selected?

A. We sold them out at the current market rates for Tennessee State bonds at the time they were sold, except in one instance where we made a trade with Norton, Slaughter & Co., because our coupons were short and the bonds would not be a good delivery unless we made the one coupon good.

16 x Q. So that the bonds which you selected you got no more for than you would have got for any
14 Tennessee State bonds at the time?

A. Yes that is so.

Re-direct by Mr. ANDREWS:

17 Q. Will you please attach to your deposition the schedule of numbers and description of bonds on which you relied in making purchases and selecting Tennessee bonds?

A. You have got that so mixed up that I cannot
15 answer it—when the bonds came in we would select certain numbers which we would hold, and dispose of the others as opportunity offered—I will give it to the Examiner to copy and attach.

(Copy annexed, marked Complts. Exhibit No. 1, W. H. D. L., Spl. Exr.)

Re-cross by Mr. TWEED:

18 x Q. Did you ever know of any other person than yourselves, who, at the time referred to, made
16 any such selection?

A. Not to my knowledge.

19 x Q. Did you ever know of the complainant, Calvin A. Stevens, selecting any bonds by their numbers, and if so, when?

A. I can't answer that in that way; I know that he has made an effort to do so, but whether he has done so I have no personal knowledge.

20 x Q. About when was it that he made the effort? 17

A. During the last year.

Re-direct by Mr. ANDREWS:

21 Q. Did you not say in answer to 18 x Q. that there might have been plenty of such purchases, but I did not know of it?

A. I don't know whether I did or not.

22 Q. For whom did you purchase the $100,000 of Tennessee State bonds referred to in your direct examination? 18

A. Isaac Sherman.

23 Q. Did you not have the schedule of bonds, referred to in your examination, in your custody or under your control, at the time you made those purchases, and did you not make those purchases with the intention of relying upon the schedule in selecting the bonds which you would hold?

A. Yes.

24 Q. May not those purchases have been made earlier than 1871? 19

A. I am not certain as to the date.

GEO. ARENTS.

Subscribed and sworn to before me, this 8th day of April, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

20

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled action, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at

my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit, and examined, and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence; and that the Exhibit hereto annexed marked Complts. Exhibit No. 1, W. H. D. L., Spl. Exr., was introduced in evidence in said cause during the taking of said deposition.

Dated April 8, 1880.

WILLIAM H. DE LANCEY,
Special Examiner.

COMPLAINANT'S EXHIBIT No. 1.

W. H. D. L., Spl. Exr.

Statement of all the Bonds issued before the war, to whom and for what purpose issued, description and numbers of said bonds, and date of maturity.

Date of Receipt.	Railroads.	By whom Received.	Act authorizing Issue.	Nos. of Bonds.		De-scrip-tion.	When Bonds Mature.
Aug. 3, 1860	Cin., Cumb. Gap & Charleston.	N. E. Smith, Agent..	Mar. 22, 1860	11741 to 11800 and 1 to 66	132,000	1 to 66 Letter C	Jan. 1, 1898
" 25, 1858	Central Southern.....	Thomas Buford, Agent	Act of 1857-8.	7781 to 7908	128,000		" 1892
" "	" "	" " "	" "	7909 to 8079	171,000		" 1892
Mar. 15, 1859	" "	" " "	Elk River Bridge	8617 to 8629	13,000		" 1898
Sept. 9, 1859	" "	" " "	" "	9969 to 9981	13,000		" 1898
Jan. 18, 1860	" "	Thomas Martin, Prest.	" "	10602 to 10614	13,000		" 1898
May 9, 1860	" "	" " "	Dec. 3, 1859	11019 to 11194	176,000		" 1898
Jan. 9, 1861	" "	" " "	Elk River Bridge	1219 to 1238	20,000		" 1898
April 4, 1857	E. & Ky. and L. & N. R. R.	E. S. Cheatham.....	Dec. 15, 1855	5283 to 5302	20,000		" 1892
June 24, 1857	" " " ..	" "	" "	5453 to 5472	20,000		" 1892
Aug. 13, 1857	" " " ..	" "	" "	5473 to 5492	20,000		" 1892
Oct. 17, 1857	" " " ..	" "	" "	5863 to 5902	40,000		" 1892
Mar. 10, 1858	" " " ..	" "	Dec. 1, "	6088 to 6099	40,000		" 1892
				7000 to 7027			
Sept. 29, 1858	" " " ..	" "	Cumberland River Bdg	8155 to 8174	20,000		" 1898
Dec. 28, 1858	" " " ..	" "	" "	8305 to 8324	20,000		" 1898
Oct. 6, 1859	" " " ..	" "	" "	10091 to 10110	20,000		" 1898
Jan. 21, 1860	" " " ..	Jno. L. Helm, Agent	" "	10628 to 10638	11,000		" 1898
Sept. 7, 1850	East Tenn. & Ga. R. R.....	J. G. M. Ramsey.....	Jan. 30, 1850	1 to 150	150,000		" 1898
Mar. 3, 1851	" "	" "	" "	151 to 250	100,000		

499 1

32			31			30				29	
May 26, 1851	East Tenn. & Ga. R. R.		J. G. M. Ramsey		Jan. 30, 1850	251 to	350	100,000			
April 10, 1854	"	"	C. Wallace, Prest.		Feb. 4. 1852	876 to	895	20,000		Jan.	1, 1892
June 22, 1854	"	"	C. Wallace		" 26, 1852	896 to	915	20,000		"	1, 1892
July 30, 1853	"	"	Thos. H. Calloway		" 26, 1852	726 to	745	20,000		"	1, 1892
Sept. 7, 1853	"	"	C. Wallace		" 11, 1852	746 to	875	130,000		"	1, 1892
Nov. 8, 1854	"	"	"	"	" 11, 1852	1216 to	1505	290,000		"	1, 1892
Mar. 27, 1855	"	"	A. N. Crozier, Agt		" 26, 1852	1975 to	2014	40,000		"	1, 1892
May 31, 1858	"	"	Thos. J. Campbell, Agt		" 11, 1852	6681 to	6780	100,000		"	1, 1892
Mar. 11, 1859	"	"	R. C. Jackson, Agt		" 11, 1852	8517 to	8616	100,000		"	1, 1898
Sept. 9, 1859	"	"	C. Wallace, Prest		" 11, 1852	9982 to	10073	92,000		"	1, 1898
June 11, 1858	Edgefield & Kentucky		E. S. Cheatham, Prest.		"	7231 to	7430	300,000		"	1, 1892
Feb. 12, 1859	"	"	"	"	"	Bridge Aid		8491 to	8516	26,000		"	1, 1898
Aug. 30, 1859	"	"	"	"	"	" "		9852 to	9861	10,000		"	1, 1898
Sept. 30, 1859	"	"	"	"	"	" "		10074 to	10090	17,000		"	1, 1898
May 24, 1859	"	"	"	"	"	Feb. 11, 1852		8780 to	8959	180,000		"	1, 1898
June 9, 1859	"	"	"	"	"	Bridge Aid		8960 to	8975	16,000		"	1, 1898
Jan. 23, 1860	"	"	"	"	"	" "		10641 to	10691	51,000		"	1, 1898
April 16, 1860	"	"	"	"	"	March 22, 1860		10794 to	10838	45,000		"	1, 1898
July 27, 1852	East Tenn. & Virginia		S. D. Mitchell, Agt		Jan. 15, 1852	1 to	10	10,000	Letter B	"	1, 1892
Aug. 9, 1852	"	"	"	"	" 15, 1852	11 to	300	290,000	" "	"	1, 1892
Jan. 29, 1855	"	"	S. B. Cunningham		Feb. 11, 1852	1706 to	1974	269,000		"	1, 1892
Nov. 7, 1855	"	"	"	"	"	2993 to	3092	100,000		"	1, 1892
Jan. 17, 1856	"	"	"	"	"	Jan. 15, 1852		3133 to	3232	100,000	Letter B	"	1, 1892
July 15, 1856	"	"	"	"	"	Feb. 11, 1852		4272 to	4391	120,000		"	1, 1892
Nov. 18, 1856	"	"	"	"	"	" 1852		4841 to	4895	55,000		"	1, 1892
Mar. 3, 1857	"	"	"	"	"	" 8, 1854		5048 to	5242	195,000		"	1, 1892
June 8, 1857	"	"	"	"	"	" 8, 1854		5303 to	5452	150,000		"	1, 1892
Oct. 12, 1857	"	"	"	"	"	" 8, 1854		5793 to	5862	70,000		"	1, 1892
Feb. 4, 1858	"	"	"	"	"	" 8, 1854		5988 to	6087	100,000		"	1, 1892
April 7, 1858	"	"	"	"	"	"		6120 to	6219	100,000		"	1, 1892
June 10, 1858	"	"	"	"	"			7088 to	7130	43,000		"	1, 1892

May 7, 1860	Knoxville & Kentucky.....	Jas. A. Mabry, Prest..	Mar. 22, 1860	10939 to 11018	80,000		Jan. 1, 18 98	
Nov. 17, 1860	" "	" " "	Feb. 11, 1852	909 to 1008	100,000	Letter C	" "	
April 30, 1858	Louisville & Nashville.....	Jno. L. Helm, Prest..	Act of 1853-4	6270 to 6319 & 6574 to 6673	150,000		" "	
" 30, 1858	" "	" " "	" "	6424 to 6573	150,000		" "	
July 5, 1859	" "	" " "	Feb. 11, 1852	9302 to 9451	150,000		" "	
April 20, 1861	" "	James Guthrie, Prest..	Dec. 3, 1859	1582 to 1586	5,000	Letter C	" "	
July 24, 1855	Miss. & Tenn.....	F. M. White, Prest...	Act of 1852-3	2853 to 2891 & 2495 to 2552	98,000		" "	
May 22, 1856	Miss. Central & Tenn.....	Milton Brown, Prest..	Feb. 11, 1852	3586 to 3885	300,000		Jan. 1, 1892	
Nov. 15, 1856	" "	" " "	" 11, 1852	4597 to 4840	244,000		" "	
Aug. 28, 1857	" "	" " "	" 11, 1852	5493 to 5522	30,000		" "	
June 17, 1856	Mobile & Ohio.....	A. F. Hopkins, Prest.	" 24, 1856	4186 to 4221	36,000		" "	
" 17, 1856	" "	" " "	" 8, 1854	3886 to 4185	300,000		" "	
Dec. 12, 1856	" "	" " "	" 8, 1854	4948 to 5047	100,000		" "	
Aug. 28, 1857	" "	Milton Brown, Prest..	Act of 1853-4	5523 to 5792	270,000		" "	
Nov. 14, 1857	" "	" " " ..	Feb. 21, 1856	5903 to 5997	68,000		" "	
Oct. 11, 1859	" "	" " " ..	" 11, 1852	10111 to 10210	100,000		Jan. 1, 1898	
July 10, 1860	" "	" " " ..	" 11, 1852	11545 to 11644	100,000		" "	
Sept. 17, 1860	" "	" " " ..	" 11, 1852	367 to 516	150,000	Letter C	" "	
June 11, 1861	" "	" " " ..	" 11, 1852	1707 to 1878	172,000	" C	" "	
Oct. 4, 1852	Memphis & Charleston.....	Arch. E. Mills, Prest.	" 11, 1852	326 to 565	240,000	" B	Jan. 1, 1892	
Jan. 3, 1853	" "	" " " .	" 11, 1852	566 to 725	160,000	" B	" "	
Nov. 28, 1854	" "	Sam Tate.....	" 11, 1852	1506 to 1705	200,000		" "	
May 22, 1855	" "	"	" 8, 1854	2015 to 2054	40,000		" "	
" 22, 1855	" "	"	" 8, 1854	2055 to 2154	100,000		" "	
Nov. 28, 1855	" "	"	" 8, 1854	3093 to 3112	20,000		" "	
Mar. 21, 1856	" "	"	" 18, 1856	3403 to 3537	135,000		" "	
July 9, 1856	" "	"	Act of 1853-4	4222 to 4271 & 4392 to 4441	100,000		" "	
Sept. 29. 1856	" "	"	July 8, 1854	4492 to 4596	100,000		" "	
Mar. 18, 1858	Memphis, Clarksville & Louisville	Geo. B. Fleece, Agt..	Feb. 26, 1856	6100 to 6119	20,000		" "	
Dec. 20, 1858	" " "	Wm. A. Quarles, Prest	Bridge Aid	8295 to 8304	10,000		" "	
June 27, 1859	" " "	Chas. G. Smith, Agt..	" "	9112 to 9151	40,000		Jan. 1, 1898	

40		39		38			37	
July 9, 1859	Memphis, Clarksville & Louisville	Wm. A. Quarles, Prest	Feb. 11, 1852	9552 to 9851	300,000		Jan. 1, 1898	
Oct. 6, "	" " "	Thos. W. Wisdom, Agt	Bridge Aid	10091 to 10110	20,000		"	
Dec. 3, "	" " "	Chas. G. Smith, Agt..	" "	10231 to 10250	20,000		"	
May 1, 1860	" " "	Wm. A. Quarles.....	Feb. 11, 1852	10839 to 10938	100,000		"	
June 27, "	" " "	" "	" "	11226 to 11394	169,000		"	
July 26, "	" " "	" "	Bridge Aid	11685 to 11704	20,000		"	
" "	" " "	" "	" "	11645 to 11684	40,000		"	
Sept. 22, "	" " "	Geo. B. Fleece, Agt..	" "	517 to 536	20,000	Letter C	"	
Oct. 23, "	" " "	Wm. A. Quarles, Agt.	" "	537 to 716	180,000	Letter C	"	
Dec. 5, "	" " "	Chas. G. Smith, Agt..	" "	1009 to 1028	20,000	Letter C	"	
Feb. 28, 1861	" " "	R. W. Humphreys, Pres	Feb. 11, 1852	1489 to 1571	83,000	Letter C	"	
May 24, 1855	Memphis & Ohio.....	Robertson Topp, Prest	" "	2155 to 2454	300,000		Jan. 1, 1892	
July 11, "	" "	" " "	Act of 1853-4	2455 to 2494	40,000		"	
Oct. 15, "	" "	" " "	Feb. 11, 1852	2892 to 2991	100,000		"	
Nov. 28, "	" "	" " "	Act of 1853-4	3113 to 3132	20,000		"	
Feb. 29, 1856	" "	" " "	"	3233 to 3402	170,000		"	
April 3, 1857	" "	Sam'l P. Wallace.....	"	5243 to 5282	40,000		"	
July 26, 1858	" "	Robertson Topp.....	"	7581 to 7780	200,000		"	
Dec. 17, "	" "	" "	Feb. 11, 1852	8175 to 8294	120,000		Jan. 1, 1898	
Jan. 21, 1859	" "	J. E. R. Ray, Agt...	Bridge Aid	8368 to 8397	30,000		"	
May 2, "	" "	" " ...	"	8630 to 8779	150,000		"	
July 4, "	" "	J. P. Wood, Agt.....	Feb. 11, 1852	9152 to 9301	150,000		"	
Sept. 2, "	" "	" "	" "	9862 to 9961	100,000		"	
" 5, "	" "	" "	Bridge Aid	9962 to 9968	7,000		"	
Dec. 14, "	" "	W. D. Pickett, Agt...	Feb. 11, 1852	10251 to 10307	57,000		"	
Jan. 19, 1860	" "	J. P. Wood, Agt.....	Bridge Aid	10615 to 10627	15,000		"	
				10639 to 10640				
July 20, 1855	McMinville & Manchester....	P. H. Marbury, Agt..	Feb. 11, 1852	2553 to 2852	300,000		Jan. 1, 1892	
" "	" "	" " " ..	" 21, 1856	4472 to 4491	20,000		"	
Nov. 19, 1856	" "	" " " ..	" 21, "	4896 to 4997	52,000		"	
Feb. 20, 1860	Nashville & Chattanooga.....	J. H. Whitesides, Agt	Nov. 4, 1859	10692 to 10773	82,000		Jan. 1, 1898	

May 30, 1860	Nashville & Chattanooga.....	J. H. Whitesides, Agt	Nov. 4, 1859
Nov. 16, "	" "	" " ...	"
Mar. 27, 1861	" "	" " ...	"
Dec. 23, 1859	Nashville & North Western....	V. K. Stevenson, Agt	Feb. 11, 1852
June 13, 1860	" "	" " ...	Bridge Aid
" 29, "	" "	Jno. O. Ewing, Agt...	Feb. 11, 1852
Aug. 11, "	" "	" " ...	" "
Sept. 14, "	" "	" " ...	Bridge Aid
Oct. 29, "	" "	" " ...	Feb. 11, 1852
Dec. 18, 1860	" "	" " ...	"
Jan. 29, 1861	" "	" " ...	"
Feb. 23, "	" "	" " ..	"
April 22, "	" "	" " ...	"
Jan. 28, 1859	Rogersville & Jefferson.....	R. G. Fair, Prest....	Bridge Aid
July 7, "	"	"	Feb. 11, 1852
Aug. 1, 1860	" "	"	Bridge Aid
July 4, 1854	Tennessee & Alabama.....	J. S. Claybrooke, Agt	Feb. 8. 1854
Sept. 9, "	" "	" " "	"
Jan. 1, 1858	" "	Jno. Marshall.....	March 15, 1858
" 16, "	" "	Frank Hardeman....	Feb. 26, 1856
June 4, "	" "	Jno. Marshall.	" 11, 1852
Aug. 27, "	" "	"	Act of 1857-8
Dec. 15, 1859	" "	"	Mar. 15, 1858
May 10, 1858	Winchester & Alabama.....	V. K. Stevenson, Agt.	Act of 1856
June 9, "	" "	" " "	Bridge Aid
July 22, "	" "	" " "	Feb. 11, 1852
Dec. 30, "	" "	" " "	Bridge Aid
Jan. 31, 1859	" "	" " "	Feb. 11, 1852
June 21, "	" "	" " "	"
Feb. 23, 1860	" "	Jas. R. Bright, Agt...	Bridge Aid

11195 to 11225	31,000		Jan. 1, 1898
882 to 908	27,000		"
1572 to 1581	10,000		"
10332 to 10601	280,000		"
11395 to 11444	50,000		"
11445 to 11544	100,000		"
67 to 196	130,000		"
197 to 360	170,000	Letter C	"
717 to 881	165,000	Letter C	"
1029 to 1218	190,000	Letter C	"
1239 to 1358	120,000	Letter C	"
1359 to 1488	130,000	Letter C	"
1587 to 1706	120,000	Letter C	"
8343 to 8365	23,000		"
9452 to 9551	100,000		"
11705 to 11740	36,000		"
916 to 1115	200,000		Jan. 1, 1892
1116 to 1215	100.000		"
6220 to 6290 6320 to 6423 8080 to 8111	186,000		Jan. 1, 1898
5971 to 5987	17,000		Jan. 1, 1892
6781 to 7080	300,000		"
8112 to 8154	43,000		Jan. 1, 1898
10308 to 10321	14,000		"
6674 to 6680	7,000		Jan. 1, 1892
7081 to 7087	7,000		"
7431 to 7580	150,000		"
8325 to 8326	2,000		Jan. 1, 1898
8327 to 8337 8338 to 8342 8366 to 8367 8398 to 8490	111,000		"
8976 to 9111	136,000		"
10774 to 10793	20,000		"

503

RECAPITULATION.

Cincinnati, Cumberland Gap & Charleston has received	132,000
Central Southern "	534,000
Edgefield & Kentucky & Louisville & Nashville has received	211,000
East Tennessee & Georgia "	1,162,000
Edgefield & Kentucky "	645,000
East Tennessee & Virginia "	1,602,000
Knoxville & Kentucky "	180,000
Louisville & Nashville "	455,000
Mississippi & Tennessee "	98,000
Mississippi Central & Tennessee "	574,000
Mobile & Ohio "	1,296,000
Memphis & Charleston "	1,095,000
Memphis, Clarksville & Louisville "	1,042,000
Memphis & Ohio "	1,499,000
McMinnville & Manchester "	372,000
Nashville & Chattanooga "	150,000
Nashville & North-Western "	1,455,000
Rogersville & Jefferson "	159,000
Tennessee & Alabama "	460,000
Winchester & Alabama "	433,000
	$13,554,000

Deposition of R. T. Wilson.

United States Court,

1

SIXTH JUDICIAL DISTRICT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston Railroad Company,

2

vs.

THE MEMPHIS & CHARLESTON R. R. Co., and THE EAST TENNESSEE, VIRGINIA & GEORGIA R. R. Co.

3

Before WILLIAM H. DELANCEY,
Notary Public,
52 Broadway, New York.

Sept. 9, 1879.

Present—MR. ANDREWS, for Complainants; MR. HUMES, for Defendants; MR. TWEED, for Defendants.

4

RICHARD T. WILSON, a witness produced on the part of the Complainants, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

5 [Deposition taken subject to all legal objections of both parties.]

Direct examination by MR. ANDREWS:

1 Q. Please state your name, age and occupation.

A. Richard T. Wilson; banker and commission merchant; railroad President, and of full age.

2 Q. Please state what official positions you occupy in reference to the railroads of Tennessee.

A. I am President of the Memphis & Charleston
6 R. R. Co., of the East Tennessee, Virginia & Georgia R. R. Co., and a Director in the Knoxville & Ohio R. R.

3 Q. Are you a stockholder in these companies, or any of them?

A. I am a stockholder in all of them at present.

4 Q. State when your connection with Tennessee railroads began—what time?

A. In 1850, I think, or thereabouts. I first bought some stock in the East Tennessee & Georgia
7 Railroad. I think it was about that time.

5 Q. At the conclusion of the war were you a stockholder in any of the railroads?

A. In the East Tennessee & Georgia and not in any other railroad at the conclusion of the war that I think of now.

6 Q. At the conclusion of the war did you not increase your interest in the stock or securities of the Tennessee railroads?

A. Yes, sir.

8 7 Q. To what extent?

A. Well, I began to purchase stock in the East Tennessee & Georgia Road, some time, not immediately at the conclusion of the war. In 1866, '7, '8, '9, I purchased a pretty large amount of stock.

8 Q. How much?

A. That I cannot tell; but in round figures two hundred and fifty to three hundred thousand dollars

was the maximum investment of the stock at par value.

9 Q. What amount of investment did that represent?

A. Well, I don't know without referring to books.

10 Q. Will you please produce your books at the adjourned examination?

A. I cannot undertake to do that.

11 Q. Why not?

A. I don't know that you could find the account from the books; it is in memoranda, one thing and another, and I have got no books that really show it.

12 Q. Please produce the memoranda at the adjourned examination?

A. I don't think I can do that.

13 Q. Why not?

A. I don't think these questions are pertinent to the case. I am only answering for your accommodation.

14 Q. Do you decline to produce memoranda or books?

A. I decline to produce them unless advised by the Court.

15 Q. Are you a holder of bonds of any of these roads?

A. I am.

16 Q. To what extent?

A. I hold of Knoxville&Ohio bonds about forty thousand dollars. I hold a few of the East Tennessee & Georgia bonds divisional, and East Tennessee and Virginia divisional bonds—I think it aggregates about tthe sum of twenty thousand dollars or under.

17 Q. The Memphis & Charleston?

13 A. I hold largely; I suppose myself and firm have six or seven hundred thousand dollars.

18 Q. Those are the new so-called substitution bonds?

A. No, not at all.

19 Q. How many of them?

A. I think about four hundred and fifty thousand dollars.

20 Q. The stock that you bought in these Tennessee roads did not cost more than fifteen cents,
14 did it?

A. Yes, sir.

21 Q. How much more?

A. It cost an average of thirty or thirty-five cents, may be forty.

22 Q. Some was bought as low as fifteen?

A. No, none of it lower than nineteen that I now remember.

23 Q. The great part of it?

A. No, not the great part of it; very little of it
15 was bought lower than nineteen cents; none of it in fact that I now remember of; I paid for some of my stock from sixty-five to seventy-five cents and even more.

24 Q. I refer to the stock bought soon after the war?

A. I think it cost on an average from thirty-five to forty cents.

25 Q. The Memphis & Charleston bonds, what did they stand at?

16 A. We paid seventy-five cents on the dollar for those.

26 Q. When did you first hold an official position in any Tennessee railroad?

A. As President, I was elected in the summer or autumn of 1870.

27 Q. As a director?

A. As director, in 1868 or 1869.

28 Q. What were the prices of Tennessee bonds when you became director? 17

A. That I can't state certainly, but the reports of the New York Stock Exchange show.

29 Q. Well, very much below par?

A. O, yes; they were below par.

30 Q. Who drafted the Tennessee Act of July 25th, 1869?

A. I don't know who did draft that; the first that I ever heard of the act was about this—-

31 Q. What do you know about the formation of it? 18

A. In the autumn of 1868, I was asked by Mr. Branner, Mr. Calloway, and perhaps some others, to help devise some plan by which the railroads could raise a fund with which to retire at least a portion of their indebtedness to the State of Tennessee in an amount equal to the Sinking fund payments. The law in regard to payments into the sinking fund had been suspended from time to time and was then to take effect in 1870 at 19 four per cent. per annum. It was manifest to the companies, as their officers then told me, that they could not meet their sinking fund payments together with their other liabilities under their then worn out and dilapidated condition. I was asked if I could sell a bond on the railroad with which to provide a fund in such an amount as would probably meet the sinking fund payments. At that time I told them I did not think it was possible to sell a bond that they were then able to make. That their 20 own company bonds then outstanding and coming subsequent to the State lien were probably worth about forty-five to fifty cents on the dollar, and that any bond that they could make would be upon a parity with that bond, that is, it would come behind the lien of the State, and that it would not bring the then price of Tennessee bonds, which was I think in the sixties.

21 Judge Nelson who was then, I believe, the counsel for the East Tennessee and Virginia Railroad, of which John Branner was President, was called in to devise some plan by which the roads could retire so much of their indebtedness as their friends would take, and thereby raise a fund to meet their sinking fund payments, and in that conference it was suggested whether a plan could be devised by which the lien of the State could be proportionally transferred to a new bond and kept in operation. Then
22 there was some discussion how it should be done —I drew up some memoranda, he and myself together—he took it, and that's the last I heard of the formation of the Act of 1869. The object of that memorandum was, as I say, to provide the right of substitution. There was no thought of conferring any new privilege upon the railroad companies in respect to the things with which they could pay the State. All agreed that we could pay our debts in any bonds of the State. We had the example of
23 the Louisville & Nashville Railroad, which had paid off their debt in this way. The Legislature was glad to get them. The authorities of the State were urging them to pay off in any bonds they could (the roads I mean). The object of that Act was to faciliate broken down roads, that had no credit, like we were, to raise a fund with which they could probably pay off at least as much of the indebtedness as would equal the sinking fund payments which were shortly to begin. At the time
24 the Act was passed we thought that any road of so little credit as the East Tennessee Road, and in fact almost every other road except perhaps the Louisville & Nashville and the Nashville & Chattanooga Road, had not sufficient means to meet the sinking fund payments. which had been postponed from time to time at the request of the roads, though all agreed it was asking more

than should be asked of the State of Tennessee to 25
further suspend the sinking fund payments. The object and purposes of this act were to facilitate the roads of poor credit to transfer the lien which the State held to their own bonds, and thus enable them to retire the bonds of the State and pay their own debt to the State ; that was the great object of the Act that I heard of in the autumn of 1868. I came home after a general understanding that Judge Nelson should go on and elaborate it. I paid very little attention to that Act until next year ; some 26
time after it was passed Mr. Murdoch of the Mobile and Ohio Road afterwards informed me that he drew the original act. The act as passed was not such as the memorandum I drew, and was not in all respects what I thought was to be passed.

32 Q. Wherein did it differ from the draft?

A. The main difference as I now remember, and there were quite a number of differences, was a foolish provision which limited railroad companies who had issued second mortgage bonds, to paying in the 27
same series of bonds, that had been loaned them, but that did not affect us, for we had issued no second mortgage bonds, as we supposed.

33 Q. Was not another of these foolish provisions in these words "provided that the interests of the bondholders should not be affected"?

A. I don't know about that ; it was not in it when I saw it.

34 Q. You know Mr. Calloway very well?

A. Yes, I know Mr. Calloway very well. 28

35 Q. He was an officer of the East Tennessee, Virginia and Georgia Railroad?

A. He was President of the East Tennessee, Virginia and Georgia Railroad.

36 Q. Of course that company assisted in procuring its passage by the Legislature?

A. I don't know that it did.

29 37 Q. What do you think about it?

(Objected to.)

38 Q. Don't you believe that the East Tennessee, Virginia and Georgia Railroad company, or the companies then comprising what is now that company, had agents and representatives in Nashville to advocate the passage of that bill?

(Objected to as immaterial and irrelevant.)

30 A. That's the answer I make: it's immaterial and irrelevant.

(Complainant's counsel excepts to the answer.)

39 Q. Why did not the East Tennessee and Virginia R. R. Co. and the East Tennessee and Georgia Railroad Company proceed to take action under the Act of 1869?

31 A. For the very reason that they could not find any financier or capitalist who would supply the needed funds; they tried it over and over again and failed during the entire year of 1869 and well up into 1870.

40 Q. What do you know of the Act of January 20, 1870?

A. Nothing whatever about it that I now remember of.

41 Q. You have read it, have you not?

32 A. Yes.

42 Q. Did you not read it before the East Tennessee, Virginia, and Georgia Railroad Company undertook to deliver to the State some of its bonds?

A. I think I did; that is my recollection that I did.

43 Q. Your firm of R. T. Wilson & Co. were

the fiscal agents of the State of Tennessee for a time! 33

A. No, sir; I don't think they were; if they were I have forgotten it.

44 Q. Well, they have had financial transactions with the State of Tennessee?

A. I think they occasionally lent them some money as other bankers, but that they had any other connection with the State I don't remember.

45 Q. How does it happen that the comptroller of Tennessee refers to R. T. Wilson & Co. as the fiscal agents of the State of Tennessee? 34

A. If he has ever done so it has escaped my memory. If you have a report and will let me see it, perhaps it may refresh my memory.

(Respondent's counsel requests that the report referred to be shown. Complainant's counsel declines for the present.)

46 Q. Now, after the East Tennessee, Virginia and Georgia Railroad Company commenced to act under the legislation you have been testifying about, through whom were their transactions in the City of New York conducted? 35

A. Partly through R. T. Wilson & Co., and partly through the Fourth National Bank.

47 Q. You referred previously to Mr. Murdock, the Mobile and Ohio road, R. T. Wilson & Co., also attended to transactions for that company, did they not?

A. They did, in conjunction with other parties. 36

48 Q. What other parties?

A. I don't remember who all were in that syndicate; they were principally A. Iselin & Co., and Duncan, Sherman & Co.

49 Q. Was not William H. Hayes one of them?

A. He was not.

37 50 Q. Well, you employed agents and brokers in transactions in Tennessee bonds under this legislation, did you not?

A. In purchasing Tennessee bonds.

51 Q. Yes, sir.

A. Nearly all the bonds that I ever purchased were purchased through regular brokers here in the City of New York.

52 Q. Please give their names?

A. They would be very numerous.

38 53 Q. All that you remember?

A. Let me have time to refresh my memory on the subject before I answer that question.

54 Q. During the time you were purchasing Tennessee bonds, or about that time, were you not also a seller of Tennessee bonds?

A. Yes, sir; I bought and sold Tennessee bonds.

55 Q. And a borrower?

A. Yes, sir; borrowing generally as bankers do.

56 Q. You would sell and borrow quite largely

39 at times?

A. Yes, sir; my transactions were considerable in them.

57 Q. What were the prices at the time you commenced to purchase under this legislation you have referred to?

A. Well, I suppose it might be fifty-four or fifty-five cents.

58 Q. When was that?

A. The 15th day of April, 1870, I suppose is what

40 might be defined as the date of the first transaction I ever had under this legislation.

59 Q. About the same period with this legislation had not your companies or some of them refused to pay any interest in cash or a part of the interest in cash, and had tendered coupons of Tennessee bonds?

A. I don't know. I have no knowledge on that subject that I now remember of.

60 Q. Well, shortly after you commenced pur- 41
chasing was there not a decline in bonds?

A. No; on the contrary they advanced as I now remember.

61 Q. How long after you commenced buying did they decline?

A. They advanced, I say, as I remember.

62 Q. How long after did they decline?

A. Until they did decline; that I can't answer. The Stock Exchange reports will show.

63 Q. Didn't they decline within a moderate peri- 42
od after?

A. It is my impression they did not, but I cannot speak advisedly; my impression is they went up.

64 Q. Immediately?

A. Not immediately, but gradually.

65 Q. Well, didn't you pay any lower price during all your purchases than the price you paid for the first purchases?

A. Well, I can't say as to that. We would have 43
to go to the records of the Stock Exchange for that.

66 Q. Won't your books show it?

A. I reckon they would show it, but the Stock Exchange is public and my books are private property.

67 Q. Did you buy all these bonds on the Stock Exchange?

A. I think almost every bond, if not quite all.

68 Q. How many do you think you didn't buy on 44
the Stock Exchange?

A. I don't remember to have bought a single one out of the Stock Exchange, if I did it was very few. I should say not more than one hundred thousand dollars.

69 Q. In reference to these new bonds issued by the companies, at what price did the East Ten-

45 nessee, Virginia and Georgia sell at to the original purchasers?

A. Eighty-two and a half cents or a little over, the first million.

70 Q. Who were the purchasers?

A. Messrs. A. Iselin & Company principally.

71 Q. They were also purchasers of the Mobile & Ohio new bonds, were they not?

A. Well, no; not in the same sense. The Mobile & Ohio bonds were, I suppose, purchased by a syn-
46 dicate.

72 Q. Who formed that syndicate?

A. Messrs. A. Iselin & Company, Duncan, Sherman & Company, and R. T. Wilson & Co.—they are all I now remember.

73 Q. Was not the opinion of Charles Tracy attached to the prospectus for the sale of the new Mobile & Ohio bonds?

A. It was. That is, an opinion as to the validity of the substitution was attached to it, but this opin-
47 ion did not touch upon the subject of the lien of the holders of the Tennessee bonds.

74 Q. You read the opinion of Davies and Davis?

A. I saw it, but I don't think that I read it.

75 Q. You knew all about it at that time?

A. At the time of the sale of the Mobile & Ohio bonds or at the time of the sale of the East Tennessee, Virginia and Georgia bonds?

76 Q. Take the East Tennessee, Virginia and Georgia?

48 A. My recollection now is that that opinion came to my attention in the autumn of 1870; I should think so from some circumstances that occurred about that time with which I connect that opinion.

77 Q. Did you attach that opinion to any prospectus for the sale of the bonds of the East Tennessee, Virginia and Georgia?

A. I did not. I never issued any prospectus for

the sale of the East Tennessee, Virginia and Georgia 49
Railroad bonds that I now recollect of.

78 Q. Did you attempt to give it publicity in any way; the Davies and Davis opinion?

A. I only saw one copy, and the only publicity I gave it was to take it to firm of Evarts, Southmayd & Choate. Mr. Southmayd told me it was of no value whatever, and so did another one of that firm.

79 Q. Then in offering the East Tennessee and Virginia bonds and Mobile and Ohio bonds, or 50
either of them, you did not make any reference to the Davies & Davis opinion?

A. Well, it is proper to say that the Fourth National Bank were offering the East Tennessee, Virginia and Georgia bonds, and I never offered the East Tennessee, Virginia and Georgia bonds, or the Mobile and Ohio bonds unless I did so as the agent of the bank in the case of the East Tennessee, Virginia and Georgia bonds that I now remember.

80 Q. You were in frequent communication with 51
the Fourth National Bank?

A. Yes, sir.

81 Q. They knew of the opinion?

A. Yes, sir; they saw it, I think, but that I am not certain of.

82 Q. Did they offer it to the public in any way?

A. Not that I am aware of.

83 Q. The Memphis & Charleston Road delivered bonds to the State of Tennessee when?

A. It never delivered any. Mr. Iselin, of Iselin 52
& Co., bought the lien on that road from the State with his own funds, and took assignment of that lien under the provisions of law.

84 Q. That is the same Iselin to whom you showed the Davies & Davis opinion?

A. I did not show it to him.

85 Q. He knew of it?

53 A. I am not sure that he did.

86 Q. Were not you and Mr. Iselin present in the Supreme Court of the United States when this question of the lien of Tennessee bonds was being argued in the month of May, 1878?

A. I was present.

87 Q. At that time these Memphis & Charleston Railroad bonds had not been sold or negotiated?

A. They had then been sold.

88 Q. Had they been assigned?

54 A. Oh, yes, I think so, long before that.

89 Q. Well, there had been a bill pending before the United States Courts, involving that question, for some months before that time, had there not?

A. Well, as to what question that bill involved I must refer you to the records of the case; you are more familiar with it than I am.

90 Q. Have not those Memphis and Charleston bonds been lately placed on the Stock Exchange?

A. Yes, sir.

55 91 Q. Did you furnish the New York Stock Exchange with a copy of the Davies & Davis opinion?

A. I did not.

92 Q. Are they now being offered for sale?

A. I don't hear of any being offered.

93 Q. You said that you did not think that you had bought more than a hundred Tennessee bonds outside of the Stock Exchange. Where were those seven hundred and seventy odd old Tennessee and Pacific issues bought?

56 A. They were bought in the New York Stock Exchange, every bond of them, or else I got them in return for bonds loaned.

94 Q. At what price?

A. I can't give the price, I don't know. But whether I bought them or received them in return for bonds, I don't know; in either case they were got in the regular way, just as every other bond

that was bought, sold or borrowed or repaid. I did not know they were Tennessee and Pacific bonds when I got them, I never knew what road the bond was issued to that I got; I had no means of knowing this at the time I bought the bonds. 57

95 Q. When you borrowed bonds as you stated, what was the object of borrowing them?

A. I borrowed bonds frequently, as I wanted them for business purposes.

96 Q. Was it not because you had sold bonds which you did not have to deliver? 58

A. That question infringes on my private transactions. It might have beeen for that, or it might have been because I wanted to raise them for railroads. I borrowed them for a variety of purposes.

97 Q. You said your transactions were very larg on account of the railroads?

A. I didn't say on account of the railroads, did I? I think you are mistaken.

98 Q. Under these substitution laws, you said?

A. No, I do not say that; I said I was employed as a banker. 59

99 Q. Didn't I understand you that you acted largely as a banker for the railroad companies, in obtaining bonds to deliver under these substitution acts?

A. Yes, purely as a business transaction.

100 Q. Now, when you were employed as banker to buy these bonds on behalf of the railroad companies which I referred to in the first instance, when you borrowed bonds about that time, was it not because you had sold bonds and therefore had none to deliver? 60

A. Not always, by a good deal; now, for instance in the East Tennessee and Virginia Railroad I borrowed some bonds to pay that debt before I could buy them; it took time to buy them.

101 Q. Then after you bought them, or had borrowed them, I should say, to pay off this debt with,

61 and you afterwards had to buy them, didn't you try to buy them as cheaply as possible?

A. It certainly would be reasonable to suppose so.

102 Q. It was then your interest to have Tennessee bonds as low as possible?

A. It was to my interest, or the interest of my principal, to buy them as cheap as possible.

103 Q. To have them as low as possible.

A. I answer as I have.

62 (Answer objected to by complainant's counsel.)

104 Q. You also participated in transactions which took place under the act of the Tennessee Legislature for the sale of certain railroads, did you not?

A. Not directly.

105 Q. Well, how directly?

A. Not individually, I mean.

63 106 Q. Or through your firm?

A. Do you mean for supplying bonds to different roads; is that what you mean?

107 Q. Well, did you do anything under those acts?

A. Not that I remember as a firm.

108 Q. Well, in supplying bonds?

A. Yes, sir; in that way we did; we bought bonds for some of the parties who bought some of the roads.

64 109 Q. Don't your name appear as interested in some of those purchases?

A. Yes, as trustee for the East Tennessee, Virginia and Georgia Railroad.

110 Q. That was what road?

A. The Cincinnati, Cumberland Gap and Charleston Railroad.

111 Q. You were concerned in getting bonds for that purpose?

A. Yes, I bought bonds of that company for that 65
purpose as near as I remember.

112 Q. You were cognizant, then, of the proceedings that took place in Tennessee for the sale of the roads, were you not?

A. In a certain sense I was; I saw the paper advertisements, and also as trustee allowed my name to be used for the purchase of that road. In another sense, as to keep up with the judicial proceedings closely, I was not cognizant—in a general public way I knew of it. 66

113 Q. Do you know of a report made by the State Commissioners, that stated that the lien of the Tennessee bonds was one of the difficulties to be encounted in effecting the sale of the roads?

A. No, I do not; if there ever was such a report made, it has escaped my memory; I don't think I ever saw it. All that I remember on that point was Chancellor East's decision, a newspaper copy of which I saw, in which he decided that the bondholders had no lien. If the commissioners made 67
an adverse report I do not remember; I know nothing about it.

114 Q. Did you make any effort to call to the attention of Tennessee State bondholders in this city, that the questions in reference to paramount liens on railroads in Tennessee were then under adjudication?

A. I don't think I did.

115 Q. If you had called that fact to their attention don't you think it would have enhanced the 68
price of Tennessee bonds?

A. I didn't consider myself the agent of the bondholders, or that it was my duty to make any such publication of so fanciful a theory as I always believed that to be.

116 Q. Then I understand that you did nothing whatever to divulge any claim which was advanced

69 in respect of the interest of Tennessee bondholders in the railroads of the State?

A. I did nothing in their behalf, as I have already stated; I did not consider myself their agent.

117 Q. You stated that these new bonds of the East Tennessee, Va. & Ga. R. R. brought into the Company 82½ cents?

A. I said they were sold at 82½ cents.

118 Q. How much did the Company receive?

A. They received 80 cents for the first lot of them,
70 and an additional bonus of $4,500 for the first lot of a million; after that they commenced getting higher prices, and did get higher prices; ran up to 90 cents.

119 Q. Who got the difference between 80 and 90?

A. The Company in every instance. They sold the first lot at 82½, and the bank--the 4th National Bank--and the parties selling them got a commission.

71 120 Q. Who were those parties?

A. There was a contract that the bank was to sell them, and it employed other parties, giving one and a quarter per cent. commission on the sales.

121 Q. Was that contract in writing?

A. Yes sir, it was in writing.

(Please produce a copy at the adjourned examination.)

122 Q. What did the State bonds cost the Com-
72 pany?

A. Fifty-five cents on the dollar for the whole lot.

123 Q. Did not the railroad companies in which you were interested endeavor to procure the passage of the Act of January 20th, 1870?

A. I was not present at that session of the Legis- 73
lature, and have no personal knowledge on the subject.

124 Q. Was there nothing done at the meetings of the Board in reference to it?

A. Not at any meeting that I remember of when I was present.

125 Q. Was there anything done at any of the meetings?

A. I have seen no record of anything of the kind, I think it probably that they desired its passage as 74
far as I know.

126 Q. When these purchases of Tennessee bonds were made of what were known as the new bonds issued after the war, were they selling lower than those issued before the war?

A. There was a slight difference at that time as I now remember. I have seen the new bonds sell higher, and I have seen them sell lower; the new bonds were, however, generally slightly below the price of old bonds, which difference is correctly 75
shown by the reports of the New York Stock Exchange.

127 Q. A large proportion of the bonds delivered by the roads referred to were new bonds, were they not?

A. Yes, sir; but I don't remember the number or relative proportions of new and old bonds.

128 Q. That was the case with these seven hundred and forty bonds of the Tennessee and Pacific roads, was it not? 76

A. I don't remember them as bonds that were issued to the Tennessee and Pacific Railroad. The Tennessee and Pacific Railroad was built since the war, and therefore it is reasonable to conclude they were new bonds.

129 Q. Hadn't you or your firm made a loan on the Tennessee and Pacific R. R. bonds before you became a purchaser of them?

77 A. Not that I know of. No, I think not.

130 Q. Was there not a loan made on them?

A. I don't know whether there was or not.

131 Q. Were you connected with the Memphis & Charleston R. R. in 1872?

A. I don't think I was.

132 Q. When you became an officer of Tennessee railroads after the war, had the railroad companies then possession of their property, or were some of them in the possession of the United States Govern-
78 ment?

A. They all had possession as near as I can remember.

133 Q. They had received them from the United States Government?

A. Yes.

134 Q. They had accepted the conditions on which the United States Government had agreed to turn them over?

A. I should say they had. The records of the
79 office will show better than I can tell.

135 Q. Didn't you or one of your firm send to the father of the complainant in this cause to borrow from him Tennessee bonds?

A. At what time?

136 Q. At any time?

A. Not that I remember of. He was frequently in the house; he was an acquaintance of Mr. Bosher.

137 Q. Do you know Dempsey Weaver?

80 A. Yes, sir.

138 Q. Was he a stockholder in Tennessee roads?

A. I don't know that he was. I think he was not. I wish to say further about Mr. Stevens, the father of complainant, that he was frequently in the house, conversed about Tennessee bonds, railroads, and other things; but whether he was ever applied to for the loan of his bonds I don't know.

139 Q. You testified before the Committee of the Tennessee Legislature during the present year, did you not? 81

A. I did.

140 Q. You remember a suit instituted in the City of New York, to obtain an injunction against the payment of principal and interest of some Tennesee bonds?

A. When?

141 Q. At any time?

A. That runs over a very long space of time. 82

142 Q. Did you know of such a suit?

A. I did not know of it. I heard a suit was instituted to compel the State to pay some past due bonds, which under the law were preferred over the interest.

143 Q. Didn't you know of it about the time it was instituted?

A. Yes, sir, I heard of it about the time the suit was instituted, that such suit was or had been instituted, that was in 1868, as I remember, May or 83 June.

144 Q. About that time did you not purchase Tennessee bonds?

A. I don't think I did.

145 Q. How much did the Mobile and Ohio bonds sell for?

A. I can't answer that from memory.

146 Q. How much did the company receive?

A. That I can't answer from memory.

147 Q. Was there not a difference from what 84 the company received and what the bonds sold for?

A. That I can't answer from memory. As I remember they were bought at 82, perhaps 85, possibly 80 cents on the dollar (but this is from memory only). They have sold at various prices since they left the hands of the company.

85 148 Q. I don't mean that at all. I mean was there not a difference in price at which the syndicate took the bonds and the prices they sold them to the public?

A. I think there was, but how much I don't know. They were sold in Europe, and are largely owned by foreign bankers.

149 Q. You are familiar with the opinion of East, Pryor & Baxter?

A. I have seen it.

86 150 Q. When did you first see it?

A. I think I first saw it sometime in the autumn of 1870, probably 1871. I can't call to mind when I did first see it.

151 Q. Then you were conscious when you entered into these transactions for the purchase of Tennessee bonds and the issuance of the new bonds claimed to hold the lien, that there was a question as to the rights or existing as to the rights of the holders of Tennessee State bonds?

87 A. You say I was conscious of this claim. My legal advisers told me the opinion of Davies & Davis was utterly worthless. I so read the law myself and so believe it to be. I was not aware of this question at the time I entered into the purchase of Tennessee bonds.

152 Q. You were conscious at the time you participated in the issuance of the new bonds?

A. I don't believe I ever heard that that question had been raised by the bondholders then; the East
88 Tennessee, Virginia, Georgia R. R. Co. had paid its debt to the State.

153 Q. But you knew of it before the bonds were all sold?

A. In the case of the East Tennessee, Virginia and Georgia. I knew of it before they were sold. I mean the Davies & Davis' opinion.

154 Q. And also of the Mobile and Ohio?

A. Yes, sir. This question was not much con- 89
sidered; we considered it wholly mythical—no foundation in fact for it.

155 Q. Don't you know that quite a large amount of the bonds delivered by these companies to the State of Tennessee had never been in current circulation in the hands of the public?

A. No; I do not.

156 Q. Didn't you get some of them from or through some of the officers of the company?

A. I don't call to mind I ever did. If I did it has 90
escaped my memory.

157 Q. Don't you know that the public officers of the State of Tennessee, or some of them, stated in their official reports that the railroad companies of the State depreciated the price of Tennessee State bonds for the purpose of purchasing them under these Acts?

(Objected to as irrelevant.)

A. I do not know of any such reports being made. 91
If there were it has escaped my memory.

158 Q. Suppose you had gone into the market as an agent for the purchase of Tennessee State bonds, and purchased them straight along from day to day, or at stated intervals from week to week, would not that in a short time, with the large amounts of bonds you were to purchase, so greatly enhance the price of Tennessee State bonds as to have made their purchase very much more expensive?

92

(Objected to as irrelevant.)

A. The best answer I can give to that is the effect that the purchases did produce on the market. It enhanced the price of bonds considerably, as I now remember.

159 Q. Suppose you had not sold bonds during

93 that interval, would there not have been a still greater enhancement of price?

(Objected to.)

A. I would have executed orders very injudiciously if I had told Mr. A., B or C, I was obliged to have his bonds.

160 Q. Do you decline to answer?

A. That is my answer.

161 Q. Was not J. C. Mabry the person who
94 dealt for you in transactions in Tennessee bond at the time you are referring to?

A. Not that I remember, but I don't propose to give you a schedule of the progress of my general business in New York.

162 Q. Will you produce your books showing the transactions in Tennessee bonds on account of these railroads?

A. I will not.

163 Q. Will you produce those portions of them?
95 A. No.

164 Q. Have you no accounts entered into with those railroad companies at that time?

A. In some of them. What railroad companies do you speak of?

165 Q. The East Tennessee and Virginia, the East Tennessee and Georgia, and other railroads named in the title. Will you produce those accounts?

A. I refer to my counsel on the subject; if they decline to do so I will let you know.

96 166 Q. Will you produce those accounts showing very large sales of Tennessee bonds?

A. If I produce the account they will speak more accurately than I can here.

167 Q. Why did you not afford the purchasers of the New so-called substitution bonds or the New Mortgage bonds of these R. R. companies, issued for the aeged extinguishment t of this lien, so

far as claimed by you, why did you not afford them the same opportunity of judging whether Tennessee State bonds were liens upon the R. R.'s as you had for yourself, through the legal opinions which had been published? 97

(Objected to.)

A. You refer to the Davies & Davis opinion?

168 Q. Yes, sir?

A. As far as I know every bond cited the law under which it was issued, and they were public laws, and every man had sufficient opportunity of judging of the legal and binding effect as I had. And as to the Davies & Davis opinion, as I have heretofore stated, my counsel, in whom I place implicit confidence, stated it was wholly worthless and unsound. It passed from my mind and ceased to be considered by me as a matter of any importance whatever. 98

169 Q. You were one of the trustees of the Mobile & Ohio Substitution Mortgage Bonds, were you not? 99

A. I was.

170 Q. Well, did you think it equitable toward the purchasers of these substitution bo ds to furnish them with the opinion in favor of their validity as liens on the roads and not the opinion against their validity of liens?

A. I never furnished any opinion whether Mr. Tracy's or anybody else's as trustee. I simply in my capacity of trustee signed the bonds. As to the publication of the prospectus, I do not know who did that. It certainly was not brought before me as a trustee, however. 100

171 Q. Don't you know if the opinion of Davies & Davis was circulated among prospective purchasers of these substitution bonds that it would have

101 presented some obstacles, whether serious or not, to the proposed sale of these bonds?

A. I think if there was any proof wanted of that fact. I call your attention to the market price of the bonds, which, notwithstanding the Davies & Davis opinion and Mr. O'Conor's opinion these bonds are selling on the New York Stock Exchange to-day at 102½ to 103. In my opinion this shows that the public does not attach any importance to any opinion which declares these Tennessee State Bonds
102 liens upon the roads.

172 Q. Then you think these Tennessee bondholders took the risk in their own hands under the notices which were incorporated in the bonds and the reference to the public acts of Tennessee?

A. I don't know where the risk comes in; according to my view there was none, what views they may have taken I can't say.

173 Q. In purchasing Tennessee bonds you bought them at the prices you have named with
103 all the overdue and unpaid coupons attached?

A. They were sold in that way.

174 Q. Those coupons were overdue and the companies used them for the payment of overdue interest?

A. Yes, sir, they were so used.

175 Q. If the railroad companies of Tennessee had promptly paid their interest, would not that have prevented a great depression in Tennessee State bonds?

104 A. That I can't say. The retiring act of 1869 was the most judicious act ever passed on behalf of the State of Tennessee.

176 Q. Were not the discounts at which the bonds were selling one of the inducements for the execution of these acts?

A. It certainly did afford an inducement, for this reason: at that time the date of the passage of

these acts), there was hardly a railroad company in 105
the State that could raise money on its own bonds. This act came to their relief in regard to the sinking fund payments, and gave them the means or facilities with which to raise money to meet their engagements. A further inducement was to get the companies out of the hands of the State and to separate the railroad system of the State of Tennessee entirely from the State; first, because I believed the roads would be worth more if freed from interference of the State Officers and directors; and 106
secondly, thereby the State debt would be so reduced that it would enable the State to resume the payment of interest, and take her place as one of the great States of the American Union, which I thought would enhance the value of my property in the State fifty per cent., and I still think so; that was the moving cause in this operation. It has been worth millions of dollars to the State of Tennessee and her bondholders by reducing the obligations of the State in a greater degree than could 107
have been done otherwise.

Furthermore, I may be permitted to say that this legislation was in entire harmony with the wish of every debt-paying man at the time, or nearly so. I never saw but one man who was honestly in favor of paying the debt of the State that opposed it, and that was Hon. Henry Cooper, and he afterwards expressed himself delighted with the result that had been accomplished in the reduction of the State debt, and gave as his reason for then opposing it that he was afraid the railroads would not 108
retire their debts under it, but would use it for speculating in State bonds.

177 Q. Do you not know that the judiciary committee of one of the Tennessee Houses at the session of 1869, when the act was under consideration, reported a bill in lieu of the bill pending for that

purpose, in which they required the railroad companies to pay the State the identical bonds as constituting liens upon the roads to which they were issued.

A. I do not. If there was any such report I never read it.

178 Q. Don't you know that even on the very last day when that substitution measure was under consideration before one of the Houses of the General Assembly a resolution was offered for the insertion of a proviso in that law in distinct terms saving the liens of the bondholders on the roads?

A. I don't think I ever saw it. I do not read legislative proceedings generally and never have.

179 Q. You were cognizant that the Legislature 1869–70, made investigation in reference to the frauds of the roads?

A. I never saw any report to that effect.

180 Q. Had you heard of that investigation?

A. I don't think I heard of such an investigation.

181 Q. Were not many of the bonds which you purchased, issues which were the subject of that investigation?

A. Not that I know of; but in a general way there was a repudiating party which wanted every bond investigated.

182 Q. These legislative investigations and proceedings were directed principally to the new bonds?

A. I think they were, so far as I know; also the last investigation took in the old bonds?

183 Q. I do not refer to that. I only ask you about the proceedings of 1869–70?

A. I don't know as to those.

184 Q. Those purchases were largely delivered back to the State?

A. The new bonds were largely paid back to the State. Let me here call your attention to the fact

that all these investigations, if they ever did come 113
to my mind, would make very little impression on me, for the reason that after the Democratic party had obtained possession of the government, and had a constitutional convention, and two or three legislatures, as was the case, and took no action towards making any preference between new and old bonds, or towards repudiating one bond and sustaining another, with the single exception of those issued to the Mineral Home Railroad, I was more and more convinced that no discrimination between the differ- 114
ent classes of bonds would ever be made; and in confirmation of this the proposition of Gov. Marks to throw this bond and that over, as recommended in his message, and resume payment on a few, did not receive one single vote in the Legislature, as I remember, if it was voted on, and I think it was.

185 Q. Will you testify that none of these railroad companies, to which you refer as being connected with at that time, used any means whatever, or that none of their officials used any means 115
whatsoever, through publications or in any other mode, to depress the price of Tennessee bonds?

A. I will not testify to their action in any way, for I was not advised of all their actions; the records will inform you more accurately than I can.

186 Q. Don't you know that it was testified before a committee of the Tennessee Legislature this year that a sum of money was paid to a newspaper in the State of Tennessee and a receipt produced therefor, for the purpose of reducing or "bearing" State 116
bonds, and enabling the roads to buy them at low figures?

(Objected to as incompetent.)

A. No such testimony was given before that committee in my presence.

117 187 Q. Mr. Calloway, to whom you referred, was president of the company in 1872?

A. President of what company?

188 Q. The East Tennessee and Georgia Railroad?

A. Mr. Calloway was not president in 1872 of the East Tennessee and Georgia Railroad; I was president at that time.

189 Q. Did not a Director of the Memphis and Charleston Railroad, at one of the meetings held before the delivery of the bonds to the State by that
118 company, oppose making arrangements at that time for the purchase of the State bonds on the ground that the tendency in the State of Tennessee to repudiate the debt would be to lower the price of bonds, and enable them to buy at 30 or thereabouts?

A. Not that I know of; not since my connection with the roads, as far as I know or remember.

190 Q. Was not an effort made by the railroad companies, or some of them, to oppose or defeat the passage of the funding act of 1873, on the
119 ground that the passage of that act would enhance the price of bonds, and make it more difficult for the companies to purchase them?

A. Not that I know of or remember.

191 Q. Did you not expect when you negotiated the sale of some of those substitution bonds, that they would be sold to a great extent in Europe?

A. I might say that I hoped a market would be made for them there; as to what grounds I had for that expectation I don't call to mind just now.

120 192 Q. You stated that these substitution bonds contained a certificate in reference to their being liens; why did you not print the act of 11th February, 1852, under which the lien originated or extracts from it, with the same facility with which you printed an alleged transfer of that lien?

A. In what respect do you mean to say that we did print an alleged transfer of that lien?

193 Q. I am now asking why you did not print 121
the act of 1852, or any extracts from it?

A. The act of 1852 was not pertinent to the subject; I did not conceive that it had anything whatever to do with it; this transfer—this transfer of the lien was the authority under which the transaction took place, and therefore was deemed to be pertinent, and accordingly printed.

194 Q. You have had large experience in railroads, and in negotiating railroad securities; don't you know that it is customary to print and circu- 122
late, or at least offer facilities to intending purchasers, to get copies of the mortgage securing the bonds?

A. It usually is so. In this case I think the mortgages securing the bonds were printed or circulated in that way.

195 Q. Do you mean the act of 1852?

A. No, because it had no connection whatever.

196 Q. The mortgages made February, 1869, or '70, were they printed? 123

A. They were to some extent.

197 Q. Did they refer to the laws?

A. I think so; the bonds will show.

198 Q. Then I understand you that you considered that these new bonds were secured under the law of 1852?

A. I don't say so.

199 Q. Where did the lien get its origin?

A. I refer you to the laws for that.

200 Q. Well, don't you know that if you had 124
printed on the face of substitution bonds the language of the act of February 11th, 1852, "that so soon as the bonds of the State shall have been issued for the first section of the road, as aforesaid, they shall constitute a lien upon said section so prepared as aforesaid," and the balance of that section; it would at least have put the prospective purchas-

125 ers of the new bonds upon inquiry and examination as to whether the State bonds were a lien upon the properties or not!

A. What would be the effect of a garbled extract from that act, such as you have read, I am unable to say.

201 Q. Suppose you had printed the whole act?

A. I do believe that if the whole act had been printed, it would be generally construed as giving the bondholders no more connection with the rail-
126 road companies than the Emperor of China; I believe there is no more privity between the bondholder and the railroad company than with the Chinese Emperor.

202 Q. I ask you, if that act had been printed, whether it would not have put the bondholder on his guard to make some inquiry as to whether the Tennessee State bonds had a security on those roads?

A. He would have been able to judge for himself,
127 but if he construed the acts as I did, he would come to the conclusion it didn't amount to anything; the act of February 11, 1852, does not provide for the identification of any bonds; he could not have told to what road it was issued.

203 Q. Suppose you had printed on the bond or circulated for the benefit of the purchasers of these new securities the message of Gov. W. G. Brownlow, of the State of Tennessee, or extracts from it, in which he declares the State of Tennessee holds
128 this lien in trust for the benefit of the State bondholders?

(Objected to as immaterial and irrelevant, and a mere supposition without any proof.)

A. I don't think I have ever seen it, and the only way I heard of it was when it was brought into the

discussion of the Mobile & Ohio case at Washing- 129
ton in May, 1878.

204 Q. Suppose you had been the person to whom these bonds were offered, and the vendor had concealed from you the existence of an opinion given by the ex-Chief Justice of the State where the bonds were being offered for sale, would you have considered that equitable conduct on his part?

(Objected to as immaterial and irrelevant.)

130

A. In reply to that I say, if he had estimated the opinion as being worth as little as I did, when I had it examined by my learned counsel, in whose judgment I have perfect confidence, I should have considered that no obligation rested upon the vendor of those bonds to give it currency; I further say I never concealed the Davies & Davis opinion from anyone whomsoever in my life.

205 Q. Were not a large amount of bonds of the State issued and being issued at the time or shortly 131
before the passage of this act of 1869?

A. The records of the State will show very much better than I can, but I think not.

206 Q. Was not the issue of those large amounts of bonds authorized under the legislation of 1866 and 1867, and other acts passed since the war, the occasion of depreciating Tennessee bonds?

A. I must refer you to the State records as to the issuance of bonds; I never had any connection with the issuance of Tennessee bonds, and whether it 132
occasioned a depreciation in Tennessee bonds you can judge by the sales as well as I can.

207 Q. Were not the companies recipients of these bonds?

A. Some of my companies?

208 Q. The companies we first referred to?

A. They all received bonds at the close of the

war; it was almost absolutely necessary for them to receive new bonds in order to prevent the State from losing the entire debt, as the railroads were in a dilapidated and worn-out condition, bridges and cross-ties being rotten, iron machinery worn out, captured and destroyed, leaving the roads without credit or ability to earn money with which to make the necessary physical restoration, so as to enable them to earn money to pay the interest to the State or anybody else with.

209 Q. Then they received a large amount of bonds from the State, and after they were sold the act of 1869 was passed to enable the companies to buy back those bonds at the discount then prevailing?

A. The records of the State will show the amounts and times.

210 Q. I am not asking what the records show; please answer the question?

A. I don't think that was the object at all; I have previously stated the purposes and objects of the act as far as I understood them.

211 Q. That was the effect, was it not?

A. You can judge of the effect. The State of Tennessee was broken down and crippled, and so was everybody else; Georgia bonds and other State bonds were pretty much the same way; Georgia six per cent. bonds were then selling about the same price as Tennessee six per cent. bonds.

212 Q. You know Mr. Mabry?

A. I know J. M. Mabry.

213 Q. During his visits to New York City in 1867, 1868 and 1869, or any one of them, was he not frequently in consultation with you?

A. Not very frequently, as he never did his general business with us.

214 Q. Sometimes he did?

A. Very rarely, indeed.

215 Q. Outside of your purchases for the railroad

companies, were you not a speculator in Tennessee 137
bonds?

A. That is a very singular question. I bought and sold a great many things on the market; I dealt in Tennessee bonds; I had a great many customers in them.

216 Q. Were you ever short of them?

A. That question is too personal; I don't propose to answer it.

217 Q. Was it not to your interest during the purchase of these bonds on account of the railroads 138
that the prices should be kept low?

A. As I now remember, I had very little interest in Tennessee bonds after the railroads commenced to buy. The efforts of my house were generally directed to fulfilling their engagements as bankers to the best of their ability.

218 Q. Who had charge of the legislative business of the East Tennessee, Virginia and Georgia R. R. Co. during the years 1868–69 and '70?

139

(Objected to.)

219 Q. Was not C. M. McGhee frequently in the city of Nashville during the period of 1869–70?

A. I was not there myself that I remember of, and I didn't see him there to the best of my recollection.

220 Q. Why will you not answer who had charge of the legislative business of these roads?

(Objected to as immaterial and irrelevant, 140
and because there has been no evidence that anybody had charge of such business, the question assuming something which is wholly untrue.)

A. That is my answer.

220 Q. Did you take any measures to inform the

holders of Tennessee bonds of any proceedings, executive, legislative or judicial, of what transpired in the State of Tennessee?

A. In respect to what?

221 Q. In respect to the liens on railroads?

A. I did not. It had been practically considered for twenty-five years or thereabouts that the State was the entire and absolute owner of the lien, and held it without any kind of interest on behalf of the bondholders. I think the idea of its having been a lien on behalf of the holders of State bonds would have been ridiculed in any part of Tennessee. The practical construction given to it from its very first inception up to the time the suit was commenced never hinted that the lien belonged to anybody else but the State. The State had thus practically construed the law during all this time, and I so read the law, and the bondholders up to the commencement of this suit had acquiesced in this construction.

222 Q. At the time of the passage of the act for the sale of delinquent railroads in Tennessee was it not contemplated by these railroad companies or by some of their officers, or other parties on their behalf, that they would become purchasers of these delinquent railroads, or some of them, at the sale which was expected?

(Objected to.)

A. I do not know that any such thing was contemplated; of course I don't know what was in the minds of the Corporation, but as to that having been the object of the passage of the act, I do not for one moment believe.

223 Q. Was it expected that they would buy these railroads and use them as feeders to the main line?

A. Expected by whom? 145

224 Q. By railroad officials?

A. I don't know what the railroad officials expected. It was expected that the highest and best bidder would become the owner of the roads, so far as I know.

225 Q. Will you testify that there is no record or paper of the East Tennessee, Virginia and Georgia Railroad Company or its officers which purports or indicates any action in reference to the passage of the act for the sale of delinquent roads, or any pur- 146
chases or transactions consequent thereon?

A. I have never seen such paper; if any such exists I don't know of it; I cannot testify to a nonentity; if it is permissible, I wish to state that any road which the East Tennessee, Virginia and Georgia Railroad bought at the State sales can be bought for less than it cost. They bought one road for $23,000 and sacrificed it for less than half its cost, to avoid being compelled to keep it up and run it, as its earnings did not any thing like pay the ex- 147
penses of operating and maintaining it, nor have the earnings of the other roads done so.

Adjourned to Sept. 16, 1879.
" " " 29, "
" " Oct. 8, "
" " " 10, "
" " " 11, "
" " " 13, "

OCT. 13, 1879. 148

Direct examination resumed by MR. ANDREWS;

226 Q. Through whom did the East Tennessee, Virginia and Georgia Railroad Company negotiate the sale of the new bonds?

A. The contract provides that the Fourth National Bank should sell the bonds either itself or through agents, for which it was to have 2½ per cent. com-

147 mission. The account of sales of bonds shows that they sold, under that contract, 1,393 bonds of $1,000 each, on which a commission of $34,824 was paid.

227 Q. Who were the agents or brokers who sold the bonds for the bank?

A. I think that R. T. Wilson & Co. sold most if not all of them, and in cases where they sold the bank gave them one-half of the commission paid it. This applies to the 1393 bonds sold as above stated. The accounts of sales show sales of $3,087,000 of the
150 bonds. No commission appears to have been charged on the excess of sales over the 1,393 bonds sold by the bank. Probably I was chosen President of the road and made no charge for sales after that time. These three millions and eighty-seven thousand dollars netted eighty-three $\frac{59}{100}$ cents on the dollar to the road.

228 Q. In what place did your firm of R. T. Wilson & Co. make the sales of the new bonds?

A. Mainly, if not entirely, in New York.

151 229 Q. Has not your firm paid the interest on the bonds?

A. They have not. The interest has been paid by the Gallatin National Bank as agent of the East Tennessee, Virginia and Georgia Railroad.

230 Q. Will you give the names of the persons who purchased these new bonds from your firm?

A. Adrian Iselin & Co., mainly, if not entirely.

231 Q. Where did Adrian Iselin & Co. sell those bonds?

152 A. I must refer you to them. Really I do not know where they sold them all.

232 Q. Will you state the names of some of the holders of those bonds?

A. I do not know who the present holders are.

233 Q. How much did A. Iselin & Co. pay for those bonds?

A. The accounts I have presented will show the 153
exact price paid by A. Iselin & Co. and other parties, if there were other parties.

234 Q. Did not A. Iselin & Co. sell those bonds to a large extent in the city of Geneva, through the firm of Lombard, Odier & Co., and in other places in Switzerland?

A. I must refer you to them for that information.

235 Q. Will you produce the contracts between R. T. Wilson & Co. and A. Iselin & Co., in refer- 154
ence to the sale of those bonds?

A. I do not believe I have any written contract of it; I probably have copies of some letters for a portion of it.

236 Q. Please produce them at the adjourned examination.

237 Q. Will you produce the accounts on the books of R. T. Wilson & Co., with the firm of A. Iselin & Co., during the years 1869-70, '71 and '72, in relation to transactions in Tennessee State bonds 155
and in the new bonds of the East Tennessee, Virginia & Georgia R. R. Co., or during any part of that time?

(Respondent's counsel objects to this question as incompetent and illegal, because it relates to and embraces matters wholly private, if they exist at all, between R. T. Wilson & Co. and A. Iselin & Co., and having no bearing upon the issues of this case.)

156

A. As the question has been explained by the complainant's counsel, I will confer with my counsel, and if advised that it is material to the matter at issue, I will produce the accounts, so far as they relate to the retirement of the debt of the East Tennessee, Virginia & Georgia R. R. Co., to the State, and the sale of its bonds issued in lieu thereof.

157 238 Q. Did not any paper pass from A. Iselin & Co. to you or your firm, showing at what price A. Iselin & Co., or their agents, sold the new bonds?

A. No such paper has passed that I now call to mind, as I don't remember it, and I don't think there has.

239 Q. Have you not stated that there was a profit made on the sale of the new bonds, over and above the amount you stated as having been received by the company?

158 (Respondent's counsel objects, because it neither gives the time, place or person to whom the statement is alleged to have been made, and because the question is without relevancy or competency in its present indefinite shape.)

A. In reply to that, I don't know whether I have or not, in the case of East Tennessee, Virginia & Georgia R. R.

159 240 Q. Will you produce a list, as far as you can obtain it, of the holders of these new bonds, as well on the East Tennessee, Virginia & Georgia R. R., as on the Memphis & Charleston, and the Nashville, Chattanooga & St. Louis?

A. I don't know who holds them except myself; I hold some of the Memphis & Charleston; no others.

Adjourned to Oct. 14th, 1879, at 11 A. M.

160

NEW YORK, Oct. 14, 1879.

Direct-examination resumed by Mr. ANDREWS:

Complainant's counsel offers in evidence "Report of Committee appointed to investigate the State Debt—Nashville, Tenn.," with testimony annexed to same, 1879, including

that of R. T. Wilson as an admission and de- 161
claration.

Respondent's counsel objects to the same as incompetent, illegal and hearsay.

It is agreed that this report and testimony may be produced in Court subject to the objection of respondents without attaching this report and testimony to the deposition of this witness.

162

The witness, further answering the direct interrogatories, says:

Upon further consideration respecting the inquiries contained in interrogatories 13, 14, 15, I say that I have made careful examinations of the memorandums of purchase of the R. R. stock in my possession, and find that these show that I bought from the close of the war up to 1872 the sum of about $292,000 of the par value of the stock 163
of the East Tennessee & Georgia and of the Consolidated Company at an average cost of $37\frac{65}{100}$ on the dollar.

In further answer to interrogatory No. 73, I herewith file a copy of the opinion of Charles Tracy, which was referred to as being published with the prospectus of the Mobile & Ohio bonds in my answer to said interrogatory. Marked Complainant's Exhibit No. 1. W. H. D. L., Spl. Exr.

In correction of my answer to the 76th interroga- 164
tory I now say that I first saw the opinion of Davies & Davis in the latter part of May, 1870, but I don't remember to have read it then or since then.

In further answer to direct interrogatories Nos. 124, 169, 170, 171, 172, I herewith submit and file a copy of the contract with the 4th National Bank for the sale of the substitution bonds of the East

165 Tennessee, Va. & Ga. R. R. Co., Marked Complt's Exhibit No. 2. W. H. D. L., Spl. Exr.

I also file herewith copy of the contracts between R. T. Wilson & Co. and the East Tennessee, Va. & Ga. R. R. Co., under which the bonds of the State of Tennessee were sold to the East Tenn., Va. & Ga. R. R. Co. with which to retire its debt to the State; and also statement or extract from the books of R. T. Wilson & Co. of the account as rendered to the road, embracing the entries made on their
166 books of said transactions. Marked Complt's Exhibit No. 3. W. H. D. L., Spl. Exr,; and Complt's Exhibit No. 4. W. H. D, L., Spl. Exr.

In further answer to direct interrogatories 137, 8 and 9, as to a member of my firm applying to Calvin Stephens, father of complainant, to borrow Tennessee bonds, on inquiring I am informed by Mr. C. H. Bosher, my partner, that he did so apply.

In further answer to direct interrogatory 156 I think I saw the Davies & Davis opinion in the latter
167 part of May, 1870, being about one month after the East Tennessee, Virginia and Georgia R. R. Co. had bought most of their bonds with which to pay their debt to the State.

In reply to direct interrogatory No. I herewith submit and file the following correspondence between R. T. Wilson & Co. and Messrs. A. Iselin & Co., which exhibit all the contracts made for the sale of the East Tennessee, Virginia and Georgia substitution bonds by the former to the latter, viz.:
168 Copy of letters from R. T. W. & Co. to A. Iselin & Co., dated 13th May, &c.

(Marked Complainant's Exhibit No. 5, W. H. D. L., Special Ex'r.)

In reply to direct interrogatory No. requesting the production of the accounts as shown by R. T. Wilson & Co.'s books with Messrs. A. Iselih & Co.,

I have carefully examined the books of R. T. Wilson & Co., and they do not contain a single account with A. Iselin & Co., during the years named, and I herewith file copy of the account of A. Iselin & Co. rendered, showing the purchase of the only interest I ever had in any of the substitution bonds of the East Tennessee and Virginia R. R. Co. 169

(Marked Complainants' Exhibit No. 6, W. H. D. L. Special Ex'r.)

170

That interest occurred in this way—at the outset of the sale of the East Tennessee, Virginia and Georgia substitution bonds, in order to give them a start, I agreed in conjunction with two other parties to buy $125,000 of these substitution bonds. This was in May, 1870, and before I knew Mr. Iselin, as my acquaintance with him began in the early part of that month as I now recollect. The arrangement to sell to Mr. Iselin was afterwards entered upon, and to show my faith in the bonds, I 171
still proposed to take an interest in the purchase of the $125,000 with an option of $375,000 of the $500,000, which I had been in treaty about with the other parties. They fell out, and I told the company that I would take in my name the $500,000 interest, but that it must take two-fifths of these $500,000 for its own account.

The road and myself did take this interest and the bonds were offered in Europe, but the Franco-German war intervened and prevented the sale of 172
most of them and the transaction was incomplete, and in August, 1870, A. Iselin & Co. bought out this interest, paying $7,500 for it, $4,500 of which was placed to the credit of the road and $3,000 to my credit. This is all the interest I ever had in these bonds directly or indirectly, and this interest came about in the manner I have stated, nor did I have

173 any interest in the profits of the sales made by Messrs. A. Iselin & Co., or anybody else, of these substitution bonds except as above stated.

Cross-examination by MR. HUMES:

241 x Q. Mr. Wilson, you have stated in your examination in chief the feelings of the railroad men and their action respecting the origin of the Act of 1869-70. What was the feeling of the leading men of the State in regard to it as a measure of
174 State relief, so far as you know?

A. Well, in reply to that question, it is proper for me to state that at the interview between Branner, Calloway, Judge Nelson, and myself, previously referred to, the question of how it would be viewed from the side of the State was thought of, and it was agreed that either Judge Nelson or Mr. Calloway should ascertain the feeling of prominent citizens as early as could conveniently be done, and before making any move toward having it enacted
175 into a law, whereupon some of them conversed with a few prominent citizens about Knoxville, (among whom was Ex-Gov. Brownlow, who, I believe, had taken or was about to take his seat as United States Senator), upon the subject of the State's interest in the matter.

I was informed that he seized upon the idea with great interest, and said that it was the very thing that the State needed. That it would afford a remedy for the embarrassed condition of the State
176 finances, and enable it to get in much more rapidly than could otherwise be done its outstanding indebtedness, which in the end, he said, would work out the salvation of the State's credit, and if it could be successfully carried out, would so reduce the debt as to enable the State to meet the interest without serious embarrassment to her citizens. This much I learned while I remained at Knoxville,

say two or three days after this interview respecting the Act. After which time as I now remember I returned to New York, and received frequent letters from Mr, Calloway and others of the great popularity of the measure as viewed from the State's side of the question. All agreed, so far as I heard, that any plan which would result in so largely reducing the outstanding indebtedness of the State must inevitably work a great benefit to it. And as I have previously stated, I did not know of but one man in the State who was honestly in favor of paying the debt, who did not advocate the measure in the most hearty manner, solely as a matter of public interest to the State, to say nothing of the railroad interest in it, and that one man afterwards upon seeing the great reduction of the debt that had been effected by it, said that he most heartily approved of it. 177 178

242 x Q. In interrogatory in chief No. 45, when counsel for complainants asked you as to report of the Comptroller showing that R. T. Wilson & Company were fiscal agents of the State of Tennessee, did he produce such report, and did you not request him to do so, and has he not wholly failed to do so during this examination? 179

A. I state I did request him, and he has failed to do so.

243 x Q. What sources or means of information did the holders of State bonds residing in Tennessee and New York have of these settlements of the railroads with the State while they were going on? 180

A. The matter was a subject of public discussion in the papers of Tennessee, and the large purchases of Tennessee bonds attracted public notice more or less through the financial columns of the papers of New York, which attributed the large transactions in them to purchases made for

181 railroad account, with which to retire their indebtedness to the State, and in addition to this the substitution bonds issued in lieu of the Tennessee State bonds were advertised in New York, for sale, as is shown by the following copies of advertisementst from which it will be seen that each advertisement gave notice that the substitution bonds had been issued in lieu of the debt of the State of Tennessee, and carrying its lien by assignment from the State. I present and file herewith copies of these adver-
182 tisements and names of the papers in which they were published as Exhibits to my deposition.

(Marked Respondent's Exhibit No. 1.—W. H. D. L., Spl. Ex'r.)

244 x Q. Do you know of or did you ever hear of from the year 1865 to the bringing of these suits of any coupon holder of the bonds of Tennessee presenting them for payment to any railroad com-
183 pany to whom the bonds had been issued?

A. No, I never did; nor do I believe any coupon holder ever did make such a demand against any railroad company. I think if such a demand had been made I certainly would have known of it, as I had direct relations with a great many roads and knew intimately the officers of almost every railroad to which bonds had been issued. If such a thing had ever transpired I would have been informed of it. But on the contrary, notwith-
184 standing the fact that the State of Tennessee was in default upon its interest from the outbreak of the war up to the date of the bringing of this suit, with a few exceptional times when it was paying, during all this time the bondholders by their repeated funding of their past-due coupons into the new bonds of the State and by registering their bonds as straight bonds of the

State, time and again said by their acts that they looked to the State alone as their debtor, and never intimated any claim against a railroad. 185

245 x Q. Who were the Commissioners for the sale of delinquent roads referred to in interrogatory in chief No. 115, and what was their character and standing in Tennessee?

A. They were Ex-Judges Robert G. MacKinney and Archibald Wright of the Supreme Court of the State, and Francis B. Fogg, an eminent lawyer. And it may safely be said that for probity, legal learning, and spotless character no three men in any State enjoyed a more enviable reputation. They were all men of independent fortune, over sixty years of age, without any then or former connection with the railroads; being citizens whose patriotism and fidelity to the welfare of the State was not questioned by a single individual in it. While MacKinney and Wright were on the Supreme Court for a great many years the decisions of the Court of which they were two out of the three commanded the respect of the legal mind of America. 186 187

The lawyers employed by them to conduct the business were the Hon. Edwin Ewing, Hon. Wm. F. Cooper and Wm. B. Reese; the two former of whom are universally acknowledged to be the two leading lawyers in the State. And Mr. Cooper was before the war and now is one of the Supreme Judges of the State.

246 x Q. In your answer to interrogatory in chief No. 141, you say that the father of the complainant was frequently in your office, and that you conversed with him about Tennessee bonds and railroads and other things. Did he know about these railroad settlements that were going on? 188

A. I do not certainly remember whether he did or not, but my impression is I told him as I uniformly did holders of Tennessee bonds who talked to me on the subject.

189 247 x Q. Please state the present price of East Tenessee, Va., and Ga., Railroad stock?

A. It is about 37½ cents on the dollar.

248 x Q. How many dividends have you received from the East Tennessee, Va. and Ga. Railroad since the war?

A. I think five or six dividends of 3 per cent. each.

249 x Q. You stated in your examination in chief that the opinion of Charles Tracy was published;
190 did that opinion touch upon the subject of the lien of the Tennessee bondholders?

A. It did not.

250 x Q. Will you produce that opinion?

A. I will; and I now herewith file a copy as an Exhibit to my deposition.

(Opinion already filed as Complainants' Exhibit to No. 1 hereto. W. H. D. L., Sp'l Ex'r.)

191 251 x Q. What other instance besides the one given in your answer to interrogatory 31 in chief do you know of where a railroad company made a payment or payments on their debts to the State in any bonds of the State. Please give any additional reasons which you may have going to show that the payment of the railroad debts to the State in any bonds of the State with or without the legislation of 1869 and 70, was in accordance with the custom and wish of the State?

192 A. Besides the Louisville & Nashville R. R. Co. so paying off its debt after the war, say in 1866 and before the Acts of 1869 and 1870 were passed, I have the example of the payment made by the East Tennessee and Ga. R. R. Company on the 4th of June, 1862, in which that company paid $100,000 of its indebtedness to the State in any bonds of the State. It is true that this payment pur-

ports to be made to the sinking fund, but it is to be 193
remembered that the sinking fund payments had been suspended the year previous by Statute, and there was no payment due to the sinking fund, as is fully shown by a previous receipt for nine thousand dollars, dated November 2, 1861, which receipt together with other receipts for payments made by that company, I herewith file,

(Marked "Respt's' Exhibit, No. 2." W. H. D. L., Spc'l Ex'r.)

194

I also herewith file a certified copy of the account of the East Tennessee and Georgia Railroad Company with the State,

(Marked "Resp't's Exhibit No. 3." W. H. D. L., Spc'l Ex'r.)

This shows that this payment and others were passed directly to the credit of the company on the books of the State when made. No man in, or out of the State, up to the time of the passage of the Acts of 1869 and 1870, so far as I ever heard of, for 195
one moment supposed that it was necessary to enact further legislation in order to get the privilege of paying the debts of the roads in any bonds of the State—that is, no railroad man ever supposed such a thing was necessary. They had had too many urgent demands made upon them for payments to the sinking fund, to admit of their believing that it was necessary to procure legislation in order to get the privilege of paying their debts in the identical thing in which the State was constantly 196
pressing them to pay without such legislation; hence, as I have stated in my direct answer, the sole and whole object of the legislation of 1869 and 1870 was to enable the roads to substitute their own bonds so as to carry with them the lien of the State, to raise money with which to buy Tennessee bonds to pay their debts to the State, and thus meet the

197 pressing demands of the State, which were shortly to be made upon the roads in the way of their dues to the Sinking Fund. These Sinking Fund payments as stated in answer to direct interrogatory No. ——were to be resumed in 1870.

252 x Q. You say in your answer to Direct Interrogatory No. 95, that you did not know that the Tennessee and Pacific bonds that you bought or received in payment for bonds loaned were issued to the Tennessee and Pacific Road at the time
198 you bought them, and that you did not know to what roads bonds were issued when you bought them, and that you had no means of knowing this at the time you purchased bonds. Are you familiar with the custom of buying and selling Tennessee bonds on the New York Stock Exchange, and, if so, please state the manner of buying and selling bonds there, and also please state whether the purchaser of bonds has any means of knowing to what road, or whether to any road at all, or for
199 what purpose, the bonds that he is buying were issued at the time he buys them?

A. I am perfectly familiar with the rules and customs of buying and selling Tennessee bonds at the New York Stock Exchange. The bonds are classified into "Old Tenn. 6s," "New Tenn. 6s," and "New Series Tenn. 6s." The old bonds embraced all 6% bonds issued before the war to railroads, either as loans, or in payment for stock subscriptions, those issued to turnpikes, to the
200 agricultural bureau, to build the capital with, and for stock in banks, and for any purpose whatsoever —of these there were outstanding at the close of the war about $15,000,000 in round numbers issued for various purposes.

The New Tenn. Bonds embraced the interest funded under the act of 1866, and also the new

bonds loaned to railroads and turnpikes, and also 201
some that were issued and sold to raise money for State purposes.

The New Series embraced bonds funded under subsequent funding acts to the act of 1866.

Now when a purchase is made in the regular way for "old," "new," or "new series," as the case may be, it is for delivery the following day, or it may be for cash, which means the same day; or it may be seller sixty, which means that the seller must deliver on or be- 202
fore sixty days from date of sale. In any case a delivery of any bonds of the class which is sold fulfills the obligation, and is a good delivery. The buyer cannot tell until his bonds are delivered to him at his office either the next day, or, if sold for cash, the same day, or, if sold seller sixty, sixty days hence, either the number of his bond, or for what purpose it was issued, nor, if issued to a railroad, to what railroad. No man buying a bond in the New York Stock Exchange ever did know to what 203
road it was issued when he bought it, or whether to any road at all, nor could he do so under the rules of the Stock Exchange.

253 x Q. Has there been any difference at any time between the prices of old Tenn. 6% bonds, issued to railroads as loans, and those issued by the State for purely State purposes? Please answer the same question as to new bonds?

A. There never has been any difference in the price of either old or new 6% bonds between those 204
issued to railroads and those issued for State purposes.

About the time the parties were preparing themselves with bonds, or some of them, upon which to bring these suits, I heard that they were going round from office to office, seeking to exchange the bonds they had for bonds on solvent roads, and were offer-

205 ing as high as one cent on the dollar difference between bonds issued to no roads or to insolvent roads and those issued to solvent roads, and this is the only exception, and even it is not conducted through purchases and exchanges made at the Stock Exchange, which rules the prices of bonds of all kinds.

254 x Q. Did you or your firm ever make any loans on Pacific and Tennessee bonds inquired about in direct interrogatories 131, 132, 133, 134, to those
206 holding them?

A. Neither I nor my firm ever made any loan on Pacific and Tennesse bonds, either directly or indirectly, to those holding them.

255 x Q. Direct interrogatories 173 and 174 ask why you failed to afford Tennessee bondholders the same opportunity of judging whether the Tennessee State bonds were liens upon the railroads as you had yourself. Did you ever refuse or deny to any Tennessee State bondholder equal means of know-
207 ing his rights which you had yourself?

A. I never refused or kept back from them (the Tennessee bondholders) any information upon this subject, but on the contrary I told one and all, when asked (and I was asked by a great many of them respecting the probable value of these bonds), what was being done, in a general way, by the roads in retiring their debts to the State, and frequently alluded to the laws under which these settlements were being made, and, so far as I now recollect, the
208 bondholders, without a single exception, approved of the roads paying their debts to the State, and joined with me in the opinion that this was the best and surest way of restoring the credit of the State. Besides this the purchases of bonds by the roads and the payment of their indebtedness to the State, and the sale of the New Railroad substitution

bonds were matters of public notoriety both in New 209
York and in Tennessee.

256 x Q. Have you copies of the receipts of the payments by the East Tennessee, Virginia and Georgia Railroad Company to the State of its debt, if you have file them?

A. I have and I herewith produce and file them.

(Receipts produced, and marked Recpts. Exhibits No. 4, W. H. D. L., Spl. Ex'r.)

Adjourned to Oct. 23d.

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Oct. 23d, 1879.

R. T. WILSON recalled and examined by Mr. ANDREWS:

Re-direct examination:

257 Q. Have you been able to find the statement or letter referred to in your previous examination?

A. I have been unable to find anything that the question referred to, as I understood it.

258 Q. Is paper now shown to you a copy of the 211
document signed by you and which paper is now offered in evidence and marked "Complainants' Exhibit No. 7, W. H. D. L., Spc'l Exr,

A. With the exception of some entries on the back of the 10th page and some minor errors of copy, I think it is. This paper which purports to be a copy of a letter, and addressed to John T. Terry, was hastily drawn by me and read to Mr. Terry, but as I now remember never delivered to 212
him. In explanation of some statements it contains, I here state that I had nothing more to do with the act of February 25th, 1869, nor with its preparation or passage, nor with the act of 20th January, 1870, nor with the acts for sale of Insolvent Roads than I have previously stated in this deposition. The statement in this letter as to the preparation of the act of February 25th, 1869, and

213 that I induced its passage, simply meant to say that at the conference with Judge Nelson and others, previously mentioned in this deposition, I drew the memorandum of the main features of the act, and left it with Judge Neilson, telling him and the railroad men with whom I was in conference, that I thought if a law of that kind were passed, it would enable the railroad companies to retire at least a portion of their indebtedness to the State. I did not mean to say in this letter that I had anything
214 more to do with the passage of the act, than I have previously stated in this deposition, nor with the passage of the act of 20th January, 1870. Respecting the statement contained in this letter as to the legislation for the sale of defaulting roads, I only meant to say that I had, in common with others, suggested and heartily approved the State's selling its interests in the defaulting roads. This suggestion, however, as I now remember, was not original with me, nor was it made at the conference with Judge
215 Nelson and others, previously referred to in this deposition ; nor did I ever, so far as I now remember, solicit the passage of the bill in the legislature or any part thereof for the sale of the defaulting roads ; although as a State measure and as an owner of a large property interest to be benefited, and subserved by anything that would promote the public welfare of the State, I earnestly favored these measures, sincerly believing that their adoption and carrying into effect
216 would save the State many millions of dollars, and from a most careful and intimate observation of the effects produced under this legislation, in the way of reducing the State indebtedness, I am more and more convinced of the soundness of my judgment in respect to that matter believing that it has resulted in the saving to the State of several millions of dollars. I

wish to say further, in respect to the classifying of 217
myself as a railroad man in said letter, that I only meant to say that I was a director in one of the roads, and a large stockholder in it. I was not at that time an officer in a railroad company, except as previously stated.

This letter was induced by an intimation coming from Mr. Terry to the effect that if the railroad companies did not raise a fund or contribute towards a fund to procure a settlement of the State debt with the State, that the bondholders would 218
probably sue the railroads. On page 5 and line 13 it should read "and the State its debt," instead of "their." On the 18th line of the 5th page read "defeat" instead of "deferred." In explanation of the sentence commencing on the 3d line of the 7th page of said letter, in which I state that my associates and I retired about fifteen millions of the debts of the railroads, I did not mean my partners and myself; but I meant to say that my firm and such houses as Drexel, Winthrop & Co., now Drexel, 219
Morgan & Co., Adrian Iselin & Co., The New York Guaranty & Indemnity Co., Duncan, Sherman & Co., Roosevelt & Sons, and other prominent houses in this city who co-operated with me, had retired about that amount of indebtedness of the railroads to the State, which embraces the payment of debts under the retirement act, and the payment made by the parties purchasing the sold roads, through financial arrangements made by myself and my associates. On the 15th line on page 7 the word "for" 220
should read "or." On the 17th line of page 7 read "usually" for "usual."

Cross examination by Mr. HUMES:

259 x Q. In your answer in chief you have said the State saved millions by the sale of insolvent

221 roads, and by effecting the settlements with solvent roads by and under the acts of 1869 and 1870. Now please state the facts as to the sold roads, what they sold for, and what they are now worth; and what was the operation and effect as to the solvent roads, and how the State saved money through the retiring of the debts due to it from the solvent roads?

A. The Nashville & North Western R. R. was sold for $2,400,000, being a sum very much more
222 than it was worth, as will appear from the following statement of its earnings and expenses:

That road, having defaulted on its interest, fell into the hands of the State under receivership, and was leased to the Nashville & Chattanooga R. R. Co., which operated it for eighteen months previous to the 30th of June, 1871. The report of the lessee shows that it earned during this period $606,605.21. And that during the same time there was expended upon it..... $983,684 44

223

Showing for that period a net loss of.. $377,079 23

For the next ensuing twelve months it was operated by the Nashville & Chattanoogo R. R. Co. as purchaser. The earning for the fiscal year ending June 30, 1872, were..... $613,679 13
Operating and renewal expenses..... 984,526 38

224 Net loss..... $370,847 25

For the next fiscal year, ending June 30th, 1873, the earnings were..... 642,681 36
Operating and renewal expenses..... 559,150 33

Net income..... $83,531 03

For the following fiscal years, the expenses of this

division of the Nashville, Chattanooga & St. Louis 225
Railway are consolidated with the general expenses of the whole line.

The freight earnings, however, are kept separate, and the passenger earnings are assumed upon the same relative basis to the freight earnings, which they bore during the previous years when they were kept separately. Showing the following result:

Total income for the year ending June 30,				1874,	490,464 94
"	"	"	"	1875,	426,066 74 226
"	"	"	"	1876,	416,454 49
"	"	"	"	1877,	350,230 38

At the same relative rate of expenditure as was made in operating the road for the fiscal year ending June 30, 1873, this would show each of the succeeding years to pay a net loss, which was probably not the case, but is certain that the net income of the road for these four years was not sufficient to pay the interest upon one half what it cost.

For the eighteen months that it was operated for 227
account of the State, by the Nashville & Chattanooga R. R. Co., as receiver and lessee, the net loss was about $377,000.

For the first year after the purchase of the road, it was very nearly as large, and had it remained in the hands of the State, and not been sold out, it is almost certain that the State would have been brought in debt every year on account of operating expenses, and would ultimately have lost its entire debt upon the road. I am intimately acquainted with the road, 228
having had large interest in the Nashville, Chattanooga & St. Louis Railway, of which it formed a part, and have been a careful observer of its operations, from the day it was purchased up to the present time, and I most unhesitatingly state that I do not believe, from the best of my judgment, that it was worth one-half what the State sold it for.

229 Then, further, the Memphis and Charleston Railroad Company bought from the State, through Wicks & Donnigan, the McMinnville, Manchester and Southwestern Railroad and the Winchester and Alabama Railroad, paying to the State for these roads $600,000 in Tennessee bonds, carrying coupon of January, 1871. It also paid to the stockholders of these companies, as part of the purchase money, in order to remove some complications, $350,000 in the stock of the Memphis and Charleston Railroad
230 Company, and expended in grading and farther extension of the Southwestern road $137,091.78 in cash.

After operating these roads for several years, during which time the net income did not amount to half enough to pay the interest on their cost, they were sold to the Nashville, Chattanooga and St. Louis Railway for $320,000 of the forty year six per cent. bonds of the latter company; these bonds were sold at about 70c. on the dollar, being about
231 the same price which the Memphis and Charleston Railroad Company paid for the State bonds with which to make payment to the State. The accounts on the books of the Memphis and Charleston Railroad Company show a clear loss on this venture of $557,791,93, which is correct, and I believe that the Nashville, Chattanooga and St. Louis Railway, as purchaser, paid the full value for the roads bought from the State by the Memphis and Charleston Railroad Company, upon which this loss was made.

232 I will take next the Cincinnati, Cumberland Gap and Charleston road, which was purchased for $300,000 in Tennessee State bonds by C. M. McGhee and myself, as trustees for the East Tennessee, Virginia and Georgia Railroad Company, which has since been operated by that company in the most economical manner, and the income of which has failed to pay operating expenses, to say nothing of

interest on its cost, by from fifteen to eighteen 233
thousand dollars. Hence thus far this road has really been worth nothing to the purchasers, and had the State continued operating these roads through receiverships I give it as my deliberate conviction that it would have been brought in debt every year on account of their operating expenses, and long before this time the roads would have been so run down and worn out as to render them unsafe, and incapable of being operated at any net profit, and in the end the State would have lost 234
most if not all of the debt which it held upon them.

The East Tennessee, Virginia and Georgia Railroad Company bought the Rogersville and Jefferson Railroad for $23,000, and after keeping it for several years, and operating it at a loss, sold it for notes, on which it realized about six thousand five hundred dollars.

The Memphis, Clarksville & Louisville R. R. which was purchased by the Louisville and Nash- 235
ville road, was in such a dilapidated condition as to make it almost impossible to operate it except at a loss, but through the support given it by the Louisville & Nashville Railroad in the shape of means and business it has been restored, and perhaps is now as valuable, if not more valuable, than any of the sold roads; without this support, however, it would have entailed a much heavier loss upon the State than was the case.

And now, as to the saving to the State through 236
the retirement of the debts under the Acts of 1869 and 1870.

What I meant to say was this, that there was scarcely a road in the State which would have been able to resume and maintain the payments to the sinking fund when it became payable in 1870, and that as a consequence of their failure to do so nearly

237 every road would have gone into the hands of a receiver and been sold out, or else run at a continuous loss to the State.

Take for instance the East Tennessee, Va. & Ga. Railroad; at the date it made its settlement with the State it owed the State $4,117,000, and the Government had a claim upon it for about $637,000, which latter was claimed to be a paramount lien to all others, and to obtain which the War Department had appointed a military receiver, who had
238 only been temporarily restrained from taking possession through the intervention of the Circuit Court of the United States; the Government claim was settled under an act of Congress a year or two subsequent for about $200,000, mainly in ten and fifteen year bonds of the road, and the State debt was settled at a saving to the company of about $1,300,000, showing a total reduction of the indebtedness on which interest had to be paid of about: . . . . . $1,700,000.

239 The road has since been run with the greatest economy, and the net earnings have only sufficed to pay the interest on the reduced indebtedness, and to pay six dividends of three per cent. on less than two millions of dollars, amounting in the aggregate to $354,289.32

While the four per cent. sinking fund on the $4,117,000 for the nine years now elapsed is 1,482,120,

And the six per cent. interest on the $1,-
240 300,000 saved in the retirement of the State debt amounts to . . 702,000

Being a total of . . . . $2,184,120.

These two amounts being in excess of the amount of dividends paid by the sum of $1,829,830,68

Which amount it would have been utterly impossible for the road to pay; hence, in all probability,

it would have gone into the hands of a receiver and 241
been sold out.

From an intimate knowledge of the condition of the Memphis and Charleston Railroad Co., I can state truly that that road would have been sold out but for the forbearance on the part of the State granted to the management of that company in order to give it time to retire its debt, which it was finally enabled to do mainly through parties that were interested in the welfare of the company, and who supplied the money in order to save themselves 242
as far as possible from the great loss that would have been entailed upon them by letting the road pass into the hands of the State.

At the time that the lien held by the State was purchased from the State by A. Iselin & Co., that road was liable to have passed into the hands of a receiver for default in the payment of sinking fund and interest, and had such been the case I do not believe the State would have realized two-thirds of its debt. 243

The Mobile & Ohio Railroad was also in default on account of the sinking fund and interest, and has since failed to meet its interest on the substitution bonds and has been reorganized at a heavy loss to the holders.

The Nashville and Decatur road was also in default, and would have been sold out had not it succeeded in procuring parties to retire its debt under the acts of 1869–70, and would under these circumstances have brought probably not two-thirds of the 244
debt due to the State.

And this is true of nearly every so-called solvent road that paid its debt to the State, except the Nashville and Chattanooga, and Louisville and Nashville roads; not a single road other than these would have been able to have made their annual interest and sinking fund payment, that I now know

245 of. Hence all would have gone into the hands of receivers and been sold out, or else run at a loss to the State. This fact, I think, was fully realized by a large number, if not all, the holders of Tennessee State bonds, who, so far as I know, without a single exception, urged that this policy of retiring the debts due the State from the railroads should be carried into effect.

In the case of the Memphis and Charleston Railroad, Mr. Peter Geddes repeatedly urged me as its
246 president, to retire, or procure some one to retire the debt due to the State from that Company, and on one occasion he came to my office and made inquiry as to how I was getting along in the matter of retiring the debt of that Company to the State. I told him that the Company was ready to retire its debt as early as it could possibly procure means with which to do so; that it had made arrangements with some parties to buy and carry some of the bonds, with a view of either retiring its debts on its
247 own account, or else getting some of the parties to buy the lien from the State, who could give the Company more favorable terms of payment than the State could; that under such an arrangement, about three hundred thousand dollars of Tennessee bonds had been procured, and that as he was a holder of a large amount of such bonds, both for himself and Mr. George Smith, that to secure the needed amount, I would buy his bonds. He declined to sell his bonds, but insisted that I should go
248 forward and retire the debt at once, giving as his reason for urging me to retire the debt, that until that was done, I and my party could never be efficient co-workers in the restoration of the State's credit. The debt of that Company was purchased from the State by A. Iselin or A. Iselin & Co., thereby retiring the debt to the State in accordance with the wishes of Mr. Peter Geddes, (as fully ex-

pressed to me and particularly urged by him on the occasion to which I allude), and of every other bondholder, so far as I know and believe, without a single exception. 249

I give it as my deliberate judgment, having perfect familiarity with the condition of nearly every railroad in the State, that the State of Tennessee is from four to six millions of dollars better off than it would have been if the Retiring Acts and the Acts for the sale of the roads had not been passed.

260 x Q. How long have you known Mr. Iselin, and what were the circumstances under which you made his acquaintance? 250

A. In March or April, 1870, I made application to the New York Guaranty and Indemnity Company to supply the money with which to retire the debt of East Tennessee, Virginia and Georgia Railroad Company to the State, and the President of that company convened a meeting of the board of directors, in order that I might submit the application and make a statement of the condition of the roads, for the decision of the board. 251

Mr. Iselin was present at that meeting. It was in the early part of April, 1870, as I now remember. I saw him there for the first time in my life, so far as I know, but was not then presented to him.

The Guaranty and Indemnity Company declined to loan the money, whereupon it was procured from the Fourth National Bank.

Early in the succeeding month of May, Mr. Odier, of firm of Lombard, Odier & Company of Geneva, Switzerland, arrived in America, and Mr. Iselin having heard my statement respecting the wish of our company to retire its debt to the State presented the subject to Mr. Odier, and asked an introduction to me through the President of the New York Guaranty and Indemnity Company, 252

253 which was granted, and about the 12th or 15th of May, I became for the first time personally acquainted with Mr. Iselin, when we took up the subject of negotiating for the bonds, which it was proposed to issue for the purpose of raising money to retire the debt to the State. And out of this transaction grew my acquaintance and subsequent operations with Mr. Iselin.

I herewith present the account of the Mobile & Ohio Railroad called for in the examination in
254 chief.

(Marked Complainant's Exhibit No. 8.—W. H. D. L., Spl. Ex'r.)

(Counsel for defendants object to the foregoing answer and Exhibit as incompetent and irrelevant in these cases.)

Adjourned to October 24th, 1879, at 1 P. M.

255 NEW YORK, October 24th, 1879, 1 P. M.

Present—Counsel as before.

R. T. WILSON resumes:

261 x Q. In your letter to Mr. Terry you say: "That so long as the railroads were indebted to the State the temptation to them to so influence legislation, as to cause a default in the payment of coupons in order to buy them up at a discount and pay them over to the State." Did you mean to
256 say that the railroad men had influenced legislation in this way?

A. I did not. I merely meant to say, that it offered a temptation to do so.

Nov. 12th, 1879.

And further deponent saith not.

R. T. WILSON.

Subscribed and sworn to before me, this 12th day of November, A. D., 1879. } 257

WILLIAM H. DE LANCEY,
[L. S.] Notary Public,
Westchester County.

Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

258

Certificate.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
State and County of New York,

I, WILLIAM H. DE LANCEY, a Notary Public, in and for the State and County aforesaid, and duly commissioned and qualified under the laws of the United States to take depositions for use in the Circuit Courts of the United States, do hereby 259 certify that the reason for taking the foregoing deposition is, and the fact is that the testimony of the said witness is material and necessary for the complainant in the cause in the caption of said deposition named, and that the said witness lives, and did live at the time of taking said deposition in the City and County of New York, the same being at a greater distance than one hundred miles from the City of Memphis, where the Court, at which it is expected the said cause will be tried, was appointed 260 to be held, to-wit: more than five hundred miles therefrom.

I further certify that the said witness was examined, and cross-examined by the counsel for the respective parties to the cause name in the caption hereto.

I further certify that on the 9th day of September, the 13th, 14th, 23d, 24th days of October and

261 the 12th day of November, A. D. 1879, I was attended at my office, No. 52 Broadway, in the City, County and State of New York, in the Southern District of New York aforesaid by Edward L. Andrews, Esq., solicitor, and of counsel for the complainants, W. Y. C. Humes, Esq., solicitor, and of counsel for defendants, and by R. T. Wilson, the witness, who was of sound mind and of lawful age, and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole
262 truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statements, and after carefully reading the same to witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purposes of annexing the several Exhibits, and of sealing up and directing the same with this certificate of the reasons aforesaid for taking the said deposition, with my own hand, to the Court for which the same was
263 taken.

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In witness whereof, I have hereunto set my hand and seal this 31st day of December, in the year of our Lord, one thousand eight hundred and
264 seventy-nine, and of the Independence of the United States the one hundred and fourth.

WILLIAM H. DELANCEY,
[L. S.] Notary Public,
Westchester County.

Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

COMPLAINANT'S EXHIBIT No. 1. 265

W. H. D. L.,—Spl. Exr.

OPINION OF CHARLES TRACY, ESQ.

The Tennessee Statute of 1852, Ch. 151, embraced in its provisions the Mobile and Ohio Railroad Company (§ 10).

That statute fixed upon the road and property of the company a lien in nature of a mortgage in favor of the state, to the amount of state bonds advanced 266 to the company (§ 3, § 4); and it made it unlawful for the company to create any lien or incumbrance which should have priority over, or come in conflict with the state's lien; and the state's lien or mortgage was declared to have priority over all other claims existing, or to exist, against the company (§ 4).

The 12th section of that act is as follows:

> "Be it enacted, that the state of Tennessee
> "expressly reserves the right to enact by the 267
> "Legislature thereof, hereafter, all such laws
> "as may be deemed necessary to protect the
> "interest of the state, and to secure the state
> "against loss, in consequence of the issuance
> "of bonds, under the provisions of this act;
> "but in such manner as not to impair the
> "vested rights of the stockholders of the com-
> "panies."

The company subsequently made two mortgages, 268 or deeds of trust, the first of which expressly saves and reserves the rights and liens in favor of the state, and the second declares that it is subject to the lien of the first, and also that it should not interfere with the state's lien.

The act of 1869, c. 38, was passed in pursuance of the reserved power of legislation mentioned in sec-

269 tion 10 of the act of 1852. This act of 1869 provides for relieving the state from a part of its debts by a scheme for retiring the state bonds, and transferring the state's first lien to new bonds made by the company, and certified by the comptroller, and which shall be a first lien on the road and property. The provisions of the act of 1869 in this regard are clearly sanctioned by the act of 1852.

The bondholders under the first and second mortgages lose nothing by this subrogation of the
270 holders of the new bonds to the prior lien of the state, and have not at law or in equity any right to dispute the priority of such new bonds.

The reservation of the act of 1852 is made in ample terms. It saves a right of enactment to protect the interest of the state, and to secure the state against loss by reason of issuing the bonds; and it constitutes the Legislature the judges of what enactments may be deemed necessary for such purposes. The Legislature having deemed it necessary
271 to pass the act of 1869 for the protection of this interest of the state, no question of its competency or validity is admissible.

Nor is there anything in the act of 1869 which does not lie clearly within the limits of the reserved power of legislation. It does not affect the first and second mortgages. It continues the lien of the state on the same property and to the same amount while it changes the payees or creditors to be protected by the lien. There is no satisfaction
272 or extinguishment.

The sums to be paid to the state are not paid, but are made payable to the holders of the new bonds. The state ceases to be a creditor, and the new bondholders become creditors in its place. The company's obligation or debt, with the lien or charge for payment, continue to the new creditors.

The act of 1869, therefore, is clearly valid, and

the new bonds issued and certified as required by 273
it, have a first lien and a priority over the first and second mortgage bonds.

The preamble and resolutions adopted by the Board of Directors, May 25th, 1871, and the indenture executed by the company and Messrs. Duncan, Iselin and Wilson, dated July 1st, 1871, are in proper form for carrying the proposed arrangment into effect, and giving to the holders of the new bonds the benefit of a first lien on the company's property, through the parties named as 274
trustees.

(Signed) CHARLES TRACY,
50 Wall st., New York.

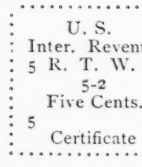
July 20, 1871.

COMPLAINANT'S EXHIBIT No. 2.

W. H. D. L.,—Spl. Ex'r.

Memorandum of an agreement made this second 275
day of May, A. D. 1879, at the City of New York, between the East Tennessee, Virginia and Georgia Railroad Company and R. T. Wilson, parties of the first part, and The Fourth National Bank of the City of New York, party of the second part.

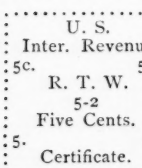
Whereas, The East Tennessee, Virginia and Georgia Railroad Company is desirous of effecting the negotiation of its certain new or mortgage 276
bonds issued or to be issued by it, in pursuance of authority duly given to it, which bonds upon the surrender to the State of Tennessee of its State bonds in due payment of certain loans or aid heretofore given to the corporations, now duly consolidated into the aforesaid railroad company, are to become a lien *pro rata* in amount and of equal

277 

validity with the unretired part of the State indebtedness upon the said railroad, the whole of said indebtedness being about three millions nine hundred and fifteen thousand dollars ($3,915,000), and the said railroad is also desirous of providing any funds which it may become necessary to employ in effecting the surrender of the said State bonds, and the substitution of its said railroad mortgage bonds
278 therefor under such authority.

And whereas, The Fourth National Bank has consented upon the conditions hereinafter stated to procure such negotiation of the said railroad mortgage bonds, and to procure certain advances upon the representation of R. T. Wilson, a director of the said railroad company, that the said company may lawfully make this agreeement and upon his individual promise to guaranty to the said bank the prompt and full repayment by the said company of
279 all advances made to it.

Now, therefore, in consideration of the premises and of the mutual covenants hereof, it is agreed :

First.—The said railroad company shall appoint 

and does hereby appoint the said Fourth National Bank its sole agent to receive and surrender to the State of Tennessee in pursuance of the authority above recited, State bonds
280 to the amount of about three millions nine hundred and fifteen thousand dollars ($3,915,000). and the said railroad company will deposit with the said bank the whole issue of their new or railroad mortgage bonds issued or to be issued, as hereinbefore described, such appointment to be irrevocable until the close of the transaction contemplated hereby.

Second.—The said bank, as rapidly as the said 281
railroad bonds shall be fully and properly substituted for the said State bonds so surrendered, shall procure the negotiation and the sale of the same as speedily as possible, at such prices as may be agreed upon by the said bank and railroad company. The said bank shall receive for its said services in securing such negotiation, a commission of two and one-half per cent. upon the par value of such bonds, except that when other parties shall sell any of the said bonds, then on such sales the said bank shall 282
receive one and one-quarter per cent. commission, and the party so selling the bonds, one and one-quarter per cent. commission.

In all cases, the expense of all advertising and printing as required, shall be at the expense of the said railroad company.

U. S. Inter. Revenue. 5c. R. T. W. 5c. 5-2. Five Cents. 5. Certificate. 5.

Third.—The said bank shall procure advances of funds to be made to the said railroad company, to an amount not exceeding what may be 283
requiring to purchase three millions nine hundred and fifteen thousand dollars ($3,915,000) of Tennessee State bonds; provided that the said company shall pledge as security for such advances, the said State bonds, or its before-described new mortgage railroad bonds when substituted for State bonds, and provided that such advances never need exceed fifty per centum of the par value of the bonds so pledged.

284

The said bank shall be entitled to charge for all advances made to the said railroad company a commission equal to five per centum per annum on the amount thereof in addition to seven per centum interest, to be paid thereon by the said railroad company.

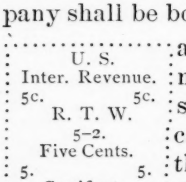
And such interest and commission shall be paid on 1st July, 1870, and quarterly thereafter.

285 The said company hereby authorizes the said bank to sell the said securities so to be pledged, and all substituted securities in case of non-payment of such advances at maturity, at public sale without notice, and to purchase the said securities at said sale.

Fourth.—The said bank shall from time to time apply all the net proceeds of the aforesaid railroad
286 bonds, as sold as above provided, to the repayment of the advances so as above made to the said railroad company, with interest and commissions so far as may be required for such purpose.

Fifth.—All advances so made and not sooner paid shall become due and payable on the first day of May, 1871. If on or before that time sufficient shall have been realized from the sale of the said railroad bonds to repay all advances made, and all
287 indebtedness to the said bank, then the said company may withdraw the balance of their bonds from the said bank.

If, however, not sufficient shall then have been realized to repay such advances, and all indebtedness to the said bank, then the said railroad company shall be bound to pay the balance against it at once, unless a satisfactory arrangement for the continuance of this or a
288 similar agreement is made. But in case no such agreement is made then the payment of such balance, if made, shall not entitle such company to the railroad bonds then unsold until it shall have paid to the said bank a commission of one and one-quarter per cent. upon an amount of such bonds at par, equal to the said balance against such Company.



Sixth.—R. T. Wilson, in consideration that the 289
said Fourth National Bank enters into this agreement at his request, and upon his aforesaid representations, hereby guarantees to the said bank that the said East Tennessee, Virginia and Georgia Railroad Company will promptly pay to the said bank all its indebtedness arising under the arrangement contemplated by this agreement, and hereby waiving all defenses, if any, which he or the said railroad company might have 290
against any such payment.

U. S. Inter. Revenue. 5c. 5c. R. T. W. 5-2 Five Cents. 5 5 Certificate.

In witness whereof the said corporations parties hereto have caused these presents to be executed by their respective presidents, and their respective corporate seals to be hereunto affixed, and the said R. T. Wilson has hereunto set his hand and seal the day and year 291
first above written.

EAST TENN., VA. & GA. R. R. CO.,
By THOMAS H. CALLAWAY,
Pres't.

In the presence of
JOE CALLAWAY.
E. S. DELANY.

East Tennessee, Virginia & Georgia SEAL Railroad Co.

292

JAMES G. MITCHELL,
Sec. and Treas.

FOURTH NATIONAL BANK OF THE CITY OF NEW YORK,
By P. C. CALHOUN, Pr.
R. T. WILSON.

293 The East Tennessee, Virginia and Georgia Railroad Company has fully paid and discharged all its liabilities to the Fourth National Bank of New York, growing out of transactions made under the foregoing contract.

New York, April 17th, 1871.

P. C. CALHOUN, Pr.

STATE OF TENNESSEE, } ss.:
Bradley County. }

On this 4th day of May, in the year 1870, before
294 me, Edwin S. DeLany, a notary public, personally came Thos. H. Callaway, the President of the East Tennessee, Virginia and Georgia Railroad Company, of the town of Cleveland, in the State of Tennessee, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in Cleveland, Bradley County, Tennessee: that he was the president of the said East Tennessee, Virginia and Georgia Railroad Company; that he new the corporate seal of the said company; that the seal af-
295 fixed to the within instrument was such corporate seal; that it was affixed by authority of the Board of Directors of said company, and that he signed his name thereto as such President, by the like authority.

Witness my hand and official seal at Cleveland, Tennessee, date above written.

[SEAL.]

EDWIN S. DELANY,
Notary Public,
296 Bradley County,
Tennessee.

Endorsed:

Dated 2d May, 1870. The East Tennessee, Virginia and Georgia Railroad Company, R. T. Wilson, and the Fourth National Bank of the city of New York. Agreement.

75

COMPLAINANT'S EXHIBIT NO. 3. 297

W. H. D. L., *Special Examiner.*

R. T. WILSON & Co.,

BANKERS AND COMMISSION MERCHANTS,

44 Broad Street.

R. T. WILSON,
J. M. JOHNSON,
B. F. WILSON, 298
W. P. ORME,
L. L. CALLAWAY,

NEW YORK, April 15th, 1870.

Captain Joseph Jaques, V. P. E. Tenn., Va. and Ga., R. R. Co.

DEAR SIR;—We propose the following:

1st.—To furnish bonds and coupons of the State of Tennessee to you with which to pay your debt 299 to the State, to the extent of three millions of dollars, at fifty-five cents on the dollar in cash. You are to give us the option for three months, of furnishing the balance of the debt you owe the State, at the same price, accrued interest to be counted at the same price.

2nd. We will undertake as financial agents of the road, to negotiate for the necessary money to carry out this contract and to sell the bonds to reimburse the same, employing such assistance at the expense 300 of the road as may in our discretion be necessary, leaving our compensation to be fixed by the road after the transaction is concluded.

3rd. If we are continued as the financial agents of the company and no providential interference presents or interferes, then we guarantee that your debt of say $3,915,000 to the extent retired shall be

301 done at not exceeding the rate of three millions of your company bonds for the whole.

Yours truly,

R. T. WILSON & CO.

I certify that the above is a true copy.

S. S. PALMER.

CLEVELAND, TENN., April 21, 1870.

MESSRS. R. T. WILSON & Co.,

302 44 Broad Street, New York.

GENTLEMEN:

Your offer to sell bonds to this road, made through its Vice President, Capt. Joseph Jaques, bearing date of the 15th instant, is received, and I have telegraphed our acceptance of your proposition, which acceptance I now confirm.

You will now proceed to negotiate for the necessary money to carry out your proposition, and you are hereby authorized to hypothecate the State 301 bonds for money so raised; also, to pledge this company's credit for the same, and whenever the extent of your ability to deliver State bonds justifies your moving in the matter of surrendering State bonds of the State of Tennessee in manner as the acts of February 25, 1869, and acts amendatory thereto provides, then you are hereby authorized to surrender the same to the Comptroller of the State of Tennessee or to his agent in New York.

With a view to this action on your part this com- 304 pany hereby authorizes you to use of its mortgage bonds to the extent which you may surrender State bonds, and when you surrender State bonds you will cause the certification of the Comptroller of the State of Tennessee to be affixed on our mortgage or company bonds, in manner as the law provides for, and when so certified you are authorized and directed to hypothecate them against money borrowed until

such time as you can sell them at such prices as this company may from time to time authorize. 305

THE EAST TENNESSEE, VIRGINIA & GEO. R. R. Co.,
By THOS. H. CALLOWAY,
Pres't.

April 20, 1870.

THOS. H. CALLOWAY, Pres't,
Cleveland, Tenn.,

The proposition won't be made before to-morrow, if then; meantime I want to know if you accept on condition that you can control the price of your bonds for one year. 306

R. T. WILSON,
F. Agent.

April 20, 1870.

THOS. H. CALLOWAY, Pres't,
Cleveland, Tenn.

You know we can't issue only as we surrender, and therefore could not make any of the bonds available as a means on which to raise money. They will insist on having control of all until enough are sold to pay advances, mainly, as they say, to avoid competition in selling. I believe this can be satisfactorily arranged either with the present or other parties. Also that we can control the price of our bonds for one year. 307

R. T. WILSON,
F. Agent. 308

CLEVELAND, TENN., April 20th, 1870.

R. T. WILSON,
44 Broad Street.

I am willing to accept your proposition, provided the whole issue of bonds are not to be tied up so that

309 in case we may need money for any other purpose, that we will have something to raise it on, and we must have the right to price our bonds.

THOMAS H. CALLOWAY,
Pres't.

CLEVELAND, TENN., April 21, 1870.

R. T. WILSON,
44 Broad Street,

I accept your proposition.

310 THOMAS H. CALLOWAY,
Pres't.

NEW YORK, May 25, 1870.

CAPT. J. JAQUES,
V. P. East Tenn. and Va. R. R., Knoxville, Tenn.

DEAR SIR:—Haven't received the promised letter after seeing Mr. Calloway, but we suppose that you have agreed to issue a new bond, and hence we are having one prepared to be ready by the 25th in-
311 stant.

We now give notice that we will sell your road under our option, enough more bonds that we have heretofore agreed to supply to pay off your State debt with.

Yours truly,
(Signed) R. T. WILSON & CO.

312

COMPLAINANT'S EXHIBIT No. 4.—W. H. D. L., *Spl. Exr.*

NEW YORK, September 30, 1870.

BOND RETIRING ACCOUNT. No. 1.

E. T., Va. and Ga. R. R., in account current with R. T. WILSON & Co.

DR. 1870.		AMOUNT.	DAYS.	INT.
July 1,	To Revenue Stamps on 3,000,000 bonds at 1.25 per 1,000 ...	3,150	91	95 55
Sep. 30,	" Interest at 12 % on 33,933.33 from 30 Sep. to 31 Oct., in order to bring int. acct. to 30 Sep., say 31 days			350 64
30,	" Balance int. acct..			23,202 30
30,	" " down to credit in cash 30 Sept., 1870.....	1,139,750 55		
		1,142,900 55		23,648 49
E. & O. E.				

316 315

1870.		AMOUNT.	DAYS.	INT.
July 1,	By 500,000 bonds, 82½ less com. 2½,	400,000	91	12,133 40
25,	100,000 "	80,000	67	1,786 66
25,	accrued interest.....	566 67	67	12 66
26,	150,000.....	120,000	66	2,640
26,	accrued interest	729 20	66	16 04
27,	150,000.....	120,000	65	2,600
27,	accrued interest	758 30	65	16 42
28,	100,000.....	80.000	64	1,706 66
28,	accrued interest.....	525	64	11 20
Aug. 3,	150,000	120,000	58	2,320
3,	accrued interest.....	962 50	58	18 62
Sep. 2,	17,000.....	13,600	28	126 94
2,	accrued interest.....	204 94	28	1 91
24,	133,000.....	106,400	6	212 80
24,	accrued interest.....	2,172 33	6	4 34
27.	50,000.....	40,000	3	40
27,	accrued interest.....	845 98	3	84
Oct. 31,	40,000	32,000		
31,	accrued interest.....	933 33		
Sep. 30,	Interest at 12%	23,302 30		
		1,142,900 55		23,648 49
Sep. 30,	By balance down.....	1,139,750 55		

314 313

79

583

320 319 318 317

Copy.

NEW YORK, December 31, 1870.

BOND RETIRING ACCOUNT No. 2.

East Tenn., Va. and Ga. R. R. Co. in account current with R. T. WILSON & Co.

DR. 1870.		AMOUNT,	INTEREST.
Dec. 31,	To balance interest acct.....		34,952 36
31,	" down to your credit.	1,174,702 91	
		1,174,702 91	34,952 36

E. & O. E.

1870.		AMOUNT.	DAYS.	CR. INTEREST.
Sept. 30,	By balance rendered.....	1,139,750 55	92	34,952 36
Dec. 31,	Interest 12% per annum..	34,952 36		
		1,174,702 91		34,952 36
Dec. 31,	By balance.....	1,174,702 91		

80

NEW YORK, March 31st, 1871.

BOND RETIRING ACCOUNT No. 3.

East Tenn., Va. and Ga. R. R., in account current with R. T. WILSON & Co.

DR. DATE. 1871.		AMOUNT.	DAYS.	INT.
Mar. 31,	To balance interest acct. . . .			568 78
31,	" down to your Cr. transferr'd to general acct. of E. Tenn., Va. and Ga. R. R. Co. . .	41,025 73		
		41,025 73		568 78

CR. DATE. 1871.			AMOUNT.	DAYS.	INT.
Feb. 10,	By 20,000 bonds 82½, less com.	2½.	16,000	49	261 34
10,	accrued interest.		155 56	49	2 53
14,	20,000 "	2½.	16,000	45	240 00
14,	accrued interest.		171 11	45	2 56
Mar. 8,	10,000 "	2½.	8,000	23	61 33
8,	accrued interest.		130 28	23	1 00
31,	Interest, 12%.		568 78		
			41,025 73		568 78

E. & O. E.

81

324 328 329 331

585

Statement of the retirement of the debt due the State of Tennessee by the East Tennessee, Virginia and Georgia Railroad Company, effected by R. T. Wilson & Co., New York.

1870.				1870.			
July 1,	To total indebtedness cancelled.....		$4,117,761 10	July 1,	By January, 1870, interest included in the cancelled debt, same paid and in the general account of the road as rendered.....	$80,909 48	
					" Amount paid in currency to balance and charged in general account.....	11 10	
					" Balance to be paid in Tenn. Bonds at 55 per cent., as below.....	4,036,840 52	
			$4,117,761 10				$4,117,761 10
April 15,	To 3,117,750 Tenn. new at 55 per cent.....		$1,714,762 50	April 15,	By Interest on $2,860,320.85 at 6 per cent. the date of first contract to deliver bonds, say $35,754 at 55 per cent....	$19,664 70	
May 25,	" 919,090.52 " "		505,499 79	July 1,	" Interest at 1 per cent. per month on same	498 18	
July 1,	" Interest at 1 per cent. per month from 15th April to date on $1,714,762.50, say 76 days		43,440 74	May 25,	" Interest on $843,302.56 at 6 per cent., the date of second contract to deliver bonds, say $4,919 at 55 per cent.....	2,705 45	
" 1,	" Interest at 1 per cent. per month from 25th April to date on $505,499.79, say 36 days.....		6,606 00	July 1,	" Interest at 1 per cent. per month on same.....	32 46	
				April 15,	" 29,000 old bonds taken in this account at 55 per cent.....	5,950 00	
				"	" 9 per cent. interest on same at 55 per cent.....	1,435 50	
				"	" 9 coupons sent us at 55 per cent.....	148 50	
				July 1,	" Interest on same at 1 per cent. per month	444 18	
				"	" Interest at 5 per cent. on average of your general account from 15 April.....	1,714 64	
				"	" Balance charged to your general account as cash this day.....	2,227,715 42	
			$2,270,309 03				$2,270,309 03

83

Statement of East Tennessee, Va. & Ga. R. R. 329
7 per cent. bonds sold.

DATE.	QUANTITY. M.	PRICE.	AMOUNT.	
1871.				
Mar. 25,	200,000	82½ and Int.	$168,266 67	
31,	10	"	8,425 00	
April 3,	10	"	8,428 89	
8,	10	"	8,438 61	
10,	65	"	54,876 25	
11,	65	"	54,888 89	
15,	75	"	63,391 67	
18,	75	"	63,435 42	330
19,	100	"	84,600 00	
20,	50	"	42,309 72	
22,	300	"	253,975 00	
25,	90	"	76,245 00	
25,	10	"	8,471 67	
Dec. 5,	20	93½ and Int.	18,700 00	
1872.				
Jany. 13,	3	90 "	2,700 00	
15,	10	90 "	9,027 22	
19,	100	89 "	89,000 00	
25,	20	90 "	18,092 05	
Feby. 8,	5	90 "	4,536 44	
12,	10	90 "	9,080 55	
21,	65	90 "	59,135 75	
April 26,	100	90 "	92,236 11	
Dec. 11,	17	89 "	15,662 19	331
12,	16	89 "	14,744 00	
1873.				
Jany. 8,	10	89 "	8,913 43	
17,	5	89 "	4,465 34	
27,	6	89 "	5,369 92	
Feby. 5,	2	89 "	1,793 42	
7,	2	89 "	1,794 19	
8,	10	89 "	8,972 87	
11,	5	89 "	4,489 31	
Mar. 1,	10	89 "	9,013 15	
14,	5	89 "	4,519 04	
29,	7	89 "	6,346 80	
April 4,	12	89 "	10,894 03	
May 28,	5	90 "	4,640 96	
29,	2	90 "	1,856 77	332
31,	5	89 "	4,593 83	
June 7,	5	89 "	4,600 55	
July 11,	8	89 "	7,135 35	
16,	5	89 "	4,464 38	
23,	10	90 "	9,042 19	
1877.				
April 21,	3	92 "	2,760 00	
May 18,	1	92 "	920 00	
July 17,	1	91 "	910 00	
Aug. 1,	20	90 "	18,000 00	
9,	1	91 "	910 00	

333

DATE.	QUANTITY. M.	PRICE.	AMOUNT.
Oct. 22,	12,000	90 and Int.	$11,060 05
Nov. 3,	8	90 "	7,391 78
14,	8	90 "	7,408 66
16,	20	90 "	18,529 32
19,	33	90 "	30,592 36
			$1,430,054 80
Less 2½ per cent. com. charged on— 1,393 bonds.....			34,825 00
1,647,000.....			$1,395,229 80
1,390,000.....		82½ "	1,139,750 55
50,000.....		"	41,025 73
334 3,087,000			$2,576,006 08
Conditional bonus received on first sales.....			4,500 00
			$21,580,506 08

Average per bond..... ....$835.92 7-10

COMPLAINANT'S EXHIBIT No. 5.

335 W. H. D. L., Spl. Ex'r.

NEW YORK, May 13th, 1870.

MESS. A. ISELIN & Co.:

Gentlemen:

I now beg to confirm in writing the verbal agreement had with you this day, which I understand to be as follows:

33 1. The East Tennessee, Virginia and Georgia Railroad Company is to pay off the debt due the State of Tennessee, for the loan of the bonds of said State in manner as the law provides, by surrendering State bonds to the Comptroller or his agent.

2. The said railroad company is to issue a mortgage bond, which is to take the place of the lien

held by the State, for an amount not exceeding 337
three millions five hundred thousand dollars ($3,500,000) principal and interest of said bonds to be payable in currency, and to be in denominations of one thousand dollars bearing seven per cent. per annum interest, with coupons therefor attached, payable semi-annually, and running to maturity within twenty, twenty-five or thirty years, as the road may elect.

3. You are to purchase of the said railroad 338
bonds, and by the acceptance of this do contract for and purchase five hundred thousand dollars at eighty-two and a half cents on the dollar, and accrued interest. This purchase secures to you the option of purchasing fifteen hundred thousand more of said bonds at the same price, which option is to run until the thirty-first day of next July.

4. The five hundred thousand dollars which you have purchased to be delivered to you by the road so soon as the road can prepare them and get the 339
State debt paid, which will probably be by the first day of July next, or soon thereafter, but not later than the thirty-first day of that month, and when delivered they are to be paid for and in like manner, in case of further purchases which you may make on your option.

5. Of the issue of said railroad bonds the road reserves and million dollars and hereby agrees not to sell them without your consent before the ex- 340
piration of six months and of the remaining amount, say five hundred thousand dollars, R. T. Wilson & Co., of this city, and such parties as they may associate with them, have the option to purchase the same, at the same price and for the same time which is given you on your option, with the further understanding that the bonds so to be pur-

341 chased by R. T. Wilson & Co. are to be offered by you, for sale in Europe, during the time your option runs, in conjunction with your bonds, upon such terms and conditions between you and them as may be agreed upon, it being understood that the terms between you and R. T. Wilson & Co. do not apply to or effect the road.

6. This contract not to be binding on you until you examine the road, which you are to do next week, and then report whether you accept or decline it.

342 Yours truly,

R. T. WILSON,
for the East Tenn., Virginia
& Ga. R. R. Co.

A. ISELIN & Co.,
P. O. Box 910, New York.

343

NEW YORK, May 13th, 1870.

R. T. WILSON, Esq., Financial Agent,
East Tennessee, Virginia & Georgia R. R. Co.

DEAR SIR: We are in receipt of your favor of to-day, which is in conformity with our verbal agreement according to which we bind ourselves to take ($500,000), five hundred thousand dollars in bonds of the East Tennessee, Virginia & Georgia R. R. at
344 82½, eighty-two and a half cents on the dollar and interest, on condition that you give us the option of taking fifteen hundred thousand ($1,500,000), more of said bonds at same price.

These bonds to be part of an issue of $3,500,000, three million five hundred thousand dollars, secured by a first mortgage on the railroad, the Company

having first satisfied the State lien according to law. 345

This contract not to be binding until we shall have examined the road and declared our intention of accepting or declining.

Yours truly,
A. ISELIN & CO.

Endorsed,

"A. ISELIN & Co.
Accepted Contract 346
May 13th, 1870."

A. ISELIN & Co.,
P. O. Box 910, New York.

NEW YORK, May 13th, 1870.

MESSRS. R. T. WILSON & Co.,
Present.

Gentlemen: We are in receipt of your favor of today, in accordance with which we are to offer for 347 sale in connection with the bonds of the East Tennessee, Virginia & Georgia R. R. Co., which we have contracted, or for which we have an option, $500,000, five hundred thousand dollars of said bonds, on which you have an option on the following terms:

1st. The $500,000 which we are to purchase of the Company are to be first sold, then sales to be made for our joint account, pro rata to our respective interests and at such prices as we may fix above what 348 the bonds cost you with interest and charges.

Our charge is to be ½%, one half per cent. for drawing exchange against bonds sold.

The bankers in Europe are to charge 1½%, one and half per cent. commission for selling bonds,

Yours truly,
A. ISELIN & Co.

349 "Copy"

NEW YORK, May 27th, 1870.

MESSRS. ADRIAN ISELIN & Co.

Gentlemen: Referring to the letter of R. T. Wilson, Financial Agent of the East Tennessee, Virginia & Georgia Railroad Company, addressed to you under date of the 13th instant, we beg to say that we have forwarded a copy of it to Knoxville, Tennessee, for confirmation by said road, and expect
350 its return in due course of mail, with the official signature of the proper officers thereto affixed.

In the meantime we hereby guarantee the performance or acceptance by the road of the contract made through its Financial Agent previously alluded to.

Yours truly,

(Signed) R. T. WILSON & CO.

A. ISELIN & Co.,
P. O. Box 910, New York.

351

NEW YORK, May 27, 1870.

R. T. WILSON, Esq., Agent, &c.,
East Tennessee, Virginia & Georgia R. R. Co.

352 Dear Sir: Having examined your road as contemplated in our letter, May 13th, we hereby express our satisfaction therewith and agree to take the bonds as therein provided.

Yours respectfully,
A. ISELIN & CO.

A. ISELIN & Co.,
P. O. Box 910, New York,

NEW YORK, May 28th, 1870. 353

R. T. WILSON, Esq., Agent, &c.,
East Tennessee, Virginia & Georgia R. R.:

DEAR SIR: We omitted in our letter of yesterday to mention that our contract of May 13th had been modified to the extent that $500,000, five hundred thousand dollars, of the first mortgage bonds of the East Tennessee, Virginia & Georgia R. R. are to be reserved and not issued until the claim of the United States Government against the company 354 shall have been settled or paid.

By confirming this you will oblige.

Yours respectfully,
A. ISELIN & CO.

A. ISELIN & Co.,
P. O. Box 910, New York.

NEW YORK, July 28th, 1870.

R. T. WILSON, Esq., Agent, 355
East Tennessee, Va. & Ga. R. R. Co.:

DEAR SIR: We hereby propose to you to buy of the $1,500,000, fifteen hundred thousand dollars, East Tennessee, Va. & Ga. R. R. Co. first mortgage bonds remaining to be sold—

$150,000 three days after the acceptance of this our proposition, at 82½ and interest;

$150,000 within 60 days, at 82½ and interest, on condition that you give us the option to purchase 356

$900,000 of the remainder at same price for six months from date, should war in Europe continue for that period, or should peace have been made before six months, for sixty days after the declaration of peace.

Yours respectfully,
A. ISELIN & CO.

"Copy." NEW YORK, Aug. 2, 1870.

Messrs. A. ISELIN & Co.:

GENTLEMEN: Yours of the 28th ultimo, proposing to purchase three hundred thousand dollars of the bonds of this company (1st mortgage 7%), is received.

I hereby accept the proposition therein contained, and give the option on nine hundred thousand dollars more of the bonds for the time, as stated by you.

Yours truly,

THE EAST TENNESSEE, VA. & GA. R. R. CO.
By R. T. WILSON,
Financial Agent.

A. ISELIN & Co.,
P. O. Box 910, New York.

NEW YORK, 17th March, 1871.

Mess. R. T. WILSON & Co.,

Financial Agents of East Tennessee and Virginia R. R.:

GENTLEMEN: We confirm the verbal arrangement made with you in relation to the unsold bonds of the East Tennessee and Virginia R. R. Co. We agree to purchase from you on the 2d May, or sooner, two hundred and fifty thousand dollars of bonds ($250,000), including the $50,000 already purchased at 82½, and interest, on condition of your giving us the option for four months from date of eight hundred and fifty thousand dollars more at the same price. Should we call for the bonds before the 2d May, you are to pay us the difference of interest the bonds bear and 12% per annum, the rate at which our loans to you have been made up to that date.

We will also loan you ourselves, or arrange with 361
the Gallatin National Bank to loan you, three hundred thousand dollars, with East Tennessee and Virginia R. R. bonds as security, for four months from date or to the expiration of our option at 12 per cent. up to the 2d May and 10 per cent. after that date, this to be in addition to the amount of the bonds to be purchased by us.

Please inform us whether you agree to this arrangement.

Yours very truly, 362

A. ISELIN & CO.

Endorsed—

"Proposition of Mess. A. Iselin & Co. Rel-
"ative to the purchase of the Last
"Bonds."

363

"Copy." NEW YORK, March 17, 1871.

MESS. A. ISELIN & CO. :

Gentlemen: We own your letter of even date, and in reply beg to say that we accept the proposition it contains.

We would remark that our understanding of that part of your letter which refers to your offer of a loan of $300,000, is that the road can return the whole am't or any part of it, at any time before 364
maturity, and receive credit at the same rate of interest and commission which the loan bears.

Yours truly,

(Signed.) R. T. WILSON & CO.,
Financial Agents of the East Tenn.,
Va. & Ga. R. R. Co.

365 COMPLAINANT'S EXHIBIT No. 6.

W. H. D. L., Spl. Exr.

NEW YORK, , 187 .

Memorandum from A. Iselin & Co.,
48 Wall street.

Oct. 18, 1870. $75.00. bot. out Interest R. T. Wilson & Co.

E. T. V. G. R. R.

366

COMPLAINANT'S EXHIBIT No. 7.

W. H. D. L., Spl. Exr.

JUNE 11th, 1878.

367 MR. JOHN T. TERRY,

Care of Messrs. E. D. MORGAN & Co.

Dear Sir: Respecting the proposed action of holders of Tennessee bonds against Tennessee railroads, about which you spoke to me, I have to say: That I have conferred with some of the parties largely interested in Tennessee railroads who confirm my views as stated to you, viz: That the rail-
368 roads as such would not contribute anything whatever towards a fund to induce a settlement of the State debt on account of apprehended danger to them through the action of Tennessee bondholders who may seek to hold them for Tennessee bond liabilities under the various acts of the Legislature of that State granting aid to railroads, &c. From the stand point of the roads view of that,

question they have nothing whatever to fear, and I 369
apprehend it will be quite impossible to convince any of them of their error, if it be one, which by the way, I scarcely believe to be possible—until they are convinced by the highest tribunal of the country.

But while this is unquestionably the position of the railroad men of Tennessee, yet I am happy to say truthfully that I do not know a single railroad man in or out of the State connected with Tennessee roads who is not now using and who has not for the 370
past three years used all their influence in the direction of the payment of the entire debt, if deemed to be practicable, or as an alternative of this to procure the best possible settlement that could be obtained for the bondholders. As a class they have intelligence enough to know the withering effects upon the general prosperity of the State of repudiation, and the State's prosperity and welfare is their prosperity and welfare, for you as a commercial man well know that of all business that you can 371
conceive of the railroad traffic business is more directly and quickly effected and shows the effects of prosperity or the reverse quicker and more directly than any other line of business.

I am well aware that the charge you made yesterday to the effect that the railroads have for previous to the past three years stood in the way of the settlement of the Tennessee debt, because it has been to their interest to get the price of bonds down so that they could buy them and pay off their debts to 372
the State, has been a current one ; and while it has been as to nearly every railroad man in the State, with perhaps one or two unimportant exceptions, a slander upon them, yet it has had just enough of plausibility about it to mislead and give it currency. When I drew the original act of Feb. 25, 1869, for I was its author, although it was so

changed that it would scarcely be called the same, this act was prompted and supported not alone by the railroad men of the State, but largely by the best men all over the State, as being the only measure by which either the State or railroads could be saved. It was apparent to all men of even moderate sagacity that the railroads could not possibly meet the interest on their indebtedness, and pay the sinking fund, to say nothing of meeting the early maturing bonds. The penalty for a failure to do this was the appointment of a Receiver by the Governor. Experience in this State-receivership business, clearly demonstrated that instead of being a remedy, it became the greatest possible evil. State Receivers administered the roads so badly that in almost every single instance the State not only failed to collect any revenue, but was actually mulcted for a large sum to pay expenses of operating the road. In addition to this great evil, so long as the railroads were indebted to the State, the temptation for them to so influence legislation as to cause a default in the payment of coupons in order that they might buy them up at a discount and pay them over to the State, was so great that every sincere friend of the State felt great solicitude for its result. But while this was so manifest, and while it was so manifestly for the interest of the State to have the Act of Feb. 25, '69, passed and the R. road debt to the State paid off, that it would appear that every wayfaring man though a fool, should have seen it as he ran. Yet such was not the case, but on the contrary many good men and many very bad men opposed the passage of the bill, and the result was a bitter contest. The good men feared it was a measure to aid railroad men to speculate in Tennessee bonds, or at least some of them said so, while others said it would be wholly impracticable in operation, be-

cause of the inability of the railroads, on account 377
of their broken down and exhausted condition and
credit to avail of its provisions, while many of the
bad men feared it might do just what it has done,
viz: enable the roads to pay their debts and the
State theirs, get them beyond the reach of State re-
ceiverships, with all their opportunities for plunder
and place, and thus prevent them and their friends
from keeping the roads in a shape out of which they
hoped to reap rewards one way or another. To de-
feat the success of the measure they have used 378
every argument that could avail. When they saw
the roads making rapid progress in relieving their
debts they used the charge that they were conspir-
ing to put down the price of bonds, while at one
time there may have been less support from rail-
road men in the direction of tax levies and payment
of interest by the State than there should have
been, yet there has been, with perhaps one or two
exceptions, nothing of this kind for the last three
or four years, but on the contrary nearly all rail- 379
road men have been zealous supporters of the cred-
it of the State. I, for one, can say conscientiously
that I have at all times taken the broad view that
neither State nor railroads would amount to any-
thing unless a proper settlement with the creditors
of the State was effected in one way or another that
would be permanent, and to support this, or rather
to prepare the way to make such a settlement prob-
able and lasting, I not only had the measure or Act
of Feb. 25, 1869, under which railroads were au- 380
thorized to retire their indebtedness, introduced
and passed, but I also suggested and aided in pass-
ing the bill for the sale of the class of roads known
as insolvent roads, with a view of bringing about a
complete separation of Railroads and State, partly,
and, I may say, largely, in order to place the State
in a position where it would be to the interest

381 of all who might be in the position to have a voice in her legislative councils, to aid and support an honorable settlement with her creditors, which I have looked upon as being the first and necessary foundation stone upon which to build all prosperity, either railroad, State or individual. To show how faithfully I have preserved this line of policy, I may be excused for stating that nearly fifteen millions of dollars of the railroad debt has been retired by my house, and its associates, in which
382 I have taken the lead. Now, without boasting my friendship for the State, who can say as much, who in the last twenty-five years has contributed so largely as I have done towards making it possible for Tennessee creditors to even get anything like their just rights, and remember while I have done this I have never been directly or indirectly responsible for the creation of one dollar of indebtedness for any railroad for any other purpose which has not been paid in full with interest, and yet I am
383 usually classed as one of the railroad men in Tennessee of more or less influence in the affairs of the State. Now this much for the past relations of the railroad men, and to the State and back to the question of the rights of Tennessee bondholders against railroads, if they have any, which I most emphatically deny, but allow me to attract your attention to the fact that in the case of the Mobile and Ohio Railroad in the United States Circuit Court at Memphis, and this subject has been
384 before that tribunal fully argued by able counsel, and decided by Judge Trigg, without even expressing a doubt, to the effect that the lien of the State upon railroads for aid granted to them under the laws of Tennessee granting the aid, was taken solely for the State and was personal to it alone, and not in any manner or shape for the benefit of the holders of Tennessee bonds which had been issued

to railroads and by them sold to the public. This 385
is precisely what Judge Trigg decided, and it is what all railroad men have been advised by the best legal counsel they could obtain, and is in perfect harmony with the legislative construction and practice of the State; but as the adverse party to this decision have appealed to the United States Supreme Court at Washington, where the case is now pending, and where the decision of the Circuit Court at Memphis will be reviewed, I submit that long before any bondholder could now get his case 386
before that tribunal, it will have been tried just as fairly as it will ever be possible for him to have it tried, and I think even more so, because I don't believe that taken alone, there is enough in his claim, if made as the prime cause of the action to induce any court to entertain it, while in the Mobile and Ohio case he has the advantage of getting his cause before the highest tribunal of the land, not directly but collaterally in just as good a shape to test its merits as if it were the prime cause of the action. 387

Now, these being the facts in the case, while so stated at the outset no railroad man that I know will give one dollar on account of the supposed claim of bondholders, or rather to get the State to settle its debts in order to avoid that question, yet all will cheerfully co-operate with the State creditors in any and all practicable means by wich *it may be hoped* to reach a settlement, with the State upon terms satisfactory to its creditors, and a few of the railroad men are using their best endeavors to get an early 388
hearing of the Mobile and Ohio case at Washington, among which I am one; as the plaintiff in one branch of that case—which, as previously stated, will just as effectively settle the case as to the right of Tennessee bondholders against railroads, as it would be possible for the bondholders to do, by all the suits they could bring, and do it, too, from two to three

389 years sooner than they could get their case before that Couri and be heard.

Bearing on the Mobile and Ohio case, I beg to hand you herewith the brief of Messrs. Humes & Poston and Joseph B. Heiskel, and invite your attention to the argument beginning on page 12 of the same.

I will at all times take great pleasure in co-operating with the creditors of the State in their efforts to procure an honorable settlement. I feel that my
390 position is such as to make it possible for me to render them some assistance.

I remain, with much respect,

Yours truly,

R. T. WILSON.

391

COMPLAINANT'S EXHIBIT No. 8.

W. H. D. L., Spl. Exr.

Statement Mobile & Ohio Railroad with the State of Tennessee to 1st January, 1872.

To amount of principal		$1,684,800	
" Int. to 1st Jan'y, 1872		100,446	
			$1,785,246 00
" Cost of Tenn. Bonds, with interest and commission to 1st January, 1872		1,142,003.56	
392 " Disct. on 1,685,000 Co. Bonds at 17½ per cent		294,875	1,436,878 56
			$348,367 44

RESPONDENT'S EXHIBIT No. 1. 393

W. H. D.L.,—Spl. Exr.

FINANCIAL.

EAST TENNESSEE,
VIRGINIA AND GEORGIA RAILROAD

FIRST MORTGAGE 7 PER CENT. BONDS,
REDEEMABLE 1900.

Interest payable 1st of January and 1st of July in the City of New York.

The mortgage is for $3,500,000, on a road 270 miles long, which has 394
been in successful operation for many years. The lien is about $13,000 per mile, which makes it, with few exceptions, the smallest issued on any road in the United States. It was created for the sole purpose of paying off the debt due the State of Tennessee, amounting to $4,117,-761.10.

An examination into this security will prove it to be one of the best ever offered in this market.

For terms and further particulars apply to

GALLATIN NATIONAL BANK,
No. 36 Wall Street,
Agent for the sale of the bonds.

395

This advertisement appeared in Commercial Advertiser, daily Tribune, World, Times, Journal of Commerce, Evening Post, and weekly Financial Chronicle, of New York City.

December 31, 1870.

FINANCIAL.

SEVEN PER CENT FIRST MORTGAGE BONDS 396

OF THE

NASHVILLE AND DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of paying a debt due

397 to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence.

DREXEL, WINTHROP & CO.,
18 Wall Street.

NEW YORK GUARANTY AND INDEMNITY CO.,
52 Broadway and Exchange Court.

398 This advertisement appeared in daily Evening Post, World, Commercial Advertiser, Bulletin, Times, Tribune, Observer, Christian Advocate, Independent, and Financial Chronicle, of New York City, and Union of Brooklyn.

RESPONDENT'S EXHIBIT NO 2.

W. H. D. L., Spl. Ex'r.

399 (Copy.) NASHVILLE, 2d Nov., 1861.

The Sinking Fund Commissioners have this day cancelled fourteen straight six per cent. coupon bonds of the State of Tennessee, each for one thousand dollars, belonging to the Sinking Fund of the East Tenn. & Geo. Railroad Company, and placed the amount, fourteen thousand dollars, to the credit of the said East Tenn. & Geo. R. R. Co.

The above fourteen bonds thus cancelled were put into the Sinking Fund of the East Tenn. & Geo.
400 R. R. Co. in place of twelve East Tenn. & Va. R. R. Co.'s endorsed bonds and two Nashville & Chattanooga R. R. Co. endorsed bonds previously purchased for ac. of East Tenn. & Ga. R. R. Co.'s Sinking Fund.

G. C. TORBETT, } Sinking Fund
J. T. DUNLAP, Comp't } Commissioners.

No. 14. NASHVILLE, November 20, 1861. 401

Received from the East Tennessee & Georgia Railroad Co. Nine Tennessee State six per cent. Bonds, each for one thousand dollars, and numbered as follows: Nos. 4333, 4334, 5851, 9584, 9086, 7113, 10,415, 4332, 2068.

These Bonds are received on account of the payments due by said Company as Sinking Fund, when next called for, and are now cancelled under act of 1859-60, ch. 93.

ISHAM G. HARRIS, Gövernor. 402

9 Bonds. J. T. DUNLAP, Comptroller.

G. C. TORBETT, Pres. Bank of Tenn.

Com. of Sinking Fund.

CHATTANOOGA, June 4, 1862.

Received from the East Tenn. & Ga. Railroad Co. one hundred Tennessee six per cent. Bonds each for one thousand dollars.

These bonds are received on account of the payment due by said Company as Sinking Fund, and 403 are now cancelled under Act 1859-60, chap. 93.

100 Bonds.

ISHAM G. HARRIS, Governor.

G. C. TORBETT, Pres. Bank of Tenn.

CHATTANOOGA, June 4, 1862.

Received from the East Tenn. & Ga. R. R. Co. eleven endorsed bonds, each for one thousand dollars and numbered as follows: 42, 43, 59, 79, 49, 45, 50, 100, 51, 46 and 27. 404

Three Bonds are received on account of the payments due by said Company as Sinking Fund, and after cancellation returned to said Company under act of 1859-60, chap. 93, sec. 2.

11 Bonds.

ISHAM G. HARRIS, Governor.

G. C. TORBETT, Pres. Bank of Tenn.

405 I, G. W. Blackburn, Comptroller, certify the above is a true copy of the original on file in my office.

{ Compt. } { seal. } In witness whereof I have hereunto set my seal of office this 1st day of Feb. 1868.

G. W. BLACKBURN,
Comptroller.

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407

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RESPONDENT'S EXHIBIT No. 3.—W. H. D. L., *Spl. Exr.*

STATE LOAN.

1861.		DR.	1860.		CR.
June 29,	State Loan Dr. to Sinking Fund: For 2 State Bonds cancelled, see James Plunkett Letter, July 19, '61, filed with Sinking Fund Papers	$ 2,000	June 30,	By Balance	$1,162,000
Nov. 5,	State Loan Dr. to Sinking Fund: For 14 State Bonds, 1 M each, cancelled and receipted for	14,000			
1862.					
April 30,	State Loan to State Bonds: Commissioners of Sinking Fund receipt for 9 Bonds, Nos. 4,333, 4,334, 5,851, 9,584, 9,086, 7,113, 10,415, 4,332, 2,068, dated November 20, '61	9,000			
June 4,	Sundries to Bonds purchased: Endorsed Bonds, 11 Bonds of this Company, cancelled, Nos. 27, 42, 43, 59, 79, 49, 45, 50, 100, 51, 46. See Sinking Fund Commissioners' receipt, dated Chattanooga, June 4, 1862. State Loan for 100 State 6 per cents., $1,000 each, cancelled, see Sinking Fund Commissioners' receipt as above	100,000			
	To Balance	1,037,000			
		$1,162,000			$1,162,000
			June 30,	By Balance	$1,037,000

I certify that the above is a true transcript from the Ledger and Journal of the East Tennessee & Georgia Railroad Company.

O. H. P. ROGAN, *Auditor*,
E. Tenn., Va. & Ga. R. R. Co.

KNOXVILLE, TENN., September 10th, 1879.

412 411 410 409

103

607

413 RESPONDENT'S EXHIBIT NO. 4.
W. H. D. L., Sp'l. Ex'r.

(Copy.) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSEE.
Agency in New York.

June 10, 1870.

Received from the East Tennessee, Virginia & Georgia Railroad Company, the following described
414 three hundred and fifty (350) bonds of the State of Tennessee, bearing interest at the rate of six per cent. per annum, in part payment of the debt which the State of Tennessee holds against said railroad company (description of bonds omitted), say three hundred and fifty (350) bonds of the State of Tennessee, as above described, for one thousand dollars each, making three hundred and fifty thousand dollars $350,000.

P. C. CALHOUN,

415 Pr't. agent of the Comptroller of the State of Tennessee specially authorized for that purpose.

Rev. Stamp, 4 cents. Cancelled.

(Copy.) COMPTROLLER'S OFFICE,
Nashville, Tenn., Jan'y 25, 1870.

By authority of an Act, passed Feb. 25, 1869, entitled "An Act to liquidate the State debt, contracted in aid of railroad companies in the State of
416 Tennessee," I hereby constitute and appoint the Fourth National Bank, of the City of New York, my agent to perform the duties of the comptroller of the Treasury of the State of Tennessee, as designated, and provided in and by Section 4 and 5 of the Act aforesaid.

G. W. BLACKBURN,
Compt.

[SEAL.]

I hereby certify that the above is a true 417
copy of the original document.

D. G. FANNING,
Notary Public.

(Copy.) COMPTROLLER'S OFFICE,
Nashville, Tenn., June 3, 1870.

P. C. CALHOUN, ESQ.,
New York,

Dear Sir:—I will be pleased to have you con- 418
tinue to act as my agent on the same terms and conditions as you have for my worthy predecessor. I will also wish to continue business with the Fourth National Bank. Will write you fully on to-morrow.

Yours very truly,
ED. R. PENNEBAKER,
[SEAL.] Complainant.

I certify that the above is a true copy of 419
the original letter.

D. G. FANNING,
Notary Public.

(Copy.) COMPTROLLER'S OFFICE OF THE
STATE OF TENNESSEE.
Agency in New York.

Received June 10, 11 and 14, 1870, from the East Tennessee, Virginia & Georgia Railroad Company, in July, 1869, January and July, 1870, coupons of 420
thirty dollars each of bonds of the State of Tennessee, delivered to me at these dates above mentioned, on account of and in part payment of the debt which the State of Tennessee holds against said railroad company, the sum of two hundred and eighty-two thousand seven hundred and fifty dollars ($282,750); say 3,834 coupons of July, 1870,

421 attached to bonds, and 5,591 coupons of July, 1869, and January, 1870, detached from bonds.

Rev. Stamp. P. C. C. June 14, '70. 5 cents.

P. C. CALHOUN, Prt. Agent,
Comptroller of State of Tenn.

(Copy.) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSEE,
422 Agency in New York,
June 14, 1870.

Received from the East Tennessee, Virginia & Georgia Railroad Company eight hundred and forty-two (842) bonds of the State of Tennessee for one thousand dollars each, bearing interest at the rate of six per cent. per annum; say eight hundred and forty-two thousand dollars, as per annexed schedule (schedule omitted), in part payment of the
423 debt which the State of Tennessee holds against said railroad company.

P. C. C. Rev. Stamp. June 14, '70 5 cents.

P. C. CALHOUN, Prt. Agent,
Controller State of Tenn.

(Copy.) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSEE,
424 Agency in New York.
June 11, 1870.

Received from the East Tennessee, Virginia & Georgia Railroad Company, forty-three (43) bonds of the State of Tennessee, for one thousand dollars each, bearing interest at the rate of six per cent. per annum, say forty-three thousand dollars, as per annexed schedule (schedule omitted) in part pay-

ment of the debt which the State of Tennessee holds 425
against said Railroad Company.

Rev. Stamp. P. C. C. June 11, 1870. 5 cents.

P. C. CALHOUN, Prt. Agent,
Comptroller of State of Tenn.

(Copy) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSEE,
Agency in New York.
June 11, 1870.

Received from the East Tennessee, Virginia and 426
Georgia Railroad Company, Twenty-six hundred (2600) bonds of the State of Tennessee for one thousand dollars each, bearing interest at the rate of six per cent. per annum, say twenty-six hundred thousand dollars, as per annexed schedule (schedule omitted), in part payment of the debt which the State of Tennessee holds against said Railroad Company.

Rev. Stamp, 5 cents. Cancelled.

P. C. CALHOUN, Pr't. Agent, 427
Comptroller of State of Tenn.

428

114-663

Vol. 2.

R/7

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~832~~ 550 45

CALVIN AMORY STEVENS, EUGENE KELLY, JOHN T. TERRY AND PETER GEDDES

Appellants,

vs.

THE LOUISVILLE NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED OCTOBER 8, 1881.

2

1

Deposition of Richard T. Wilson.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston R. R. Co., 2

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

Testimony and proofs for final hearing on the part of the respondents in the above-entitled suit, taken under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein. 3

NEW YORK, March 12th, 1880. 4

Present—MR. CHAS. H. TWEED,
For Respondents.
MR. E. L. ANDREWS,
For Complainants.

5 RICHARD T. WILSON, a witness produced on the part of the respondents in the above-entitled suit, being first duly cautioned and sworn therein to testify the truth, the whole truth, and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.

1 Q. Did you, on behalf of the East Tennessee, Virginia and Georgia Railroad Company, deliver to
6 the agent of the Comptroller of the State of Tennessee the bonds and coupons mentioned in the receipts signed by P. C. Calhoun, agent of the Comptroller, and dated June 10th, 11th and 14th, 1870, and forming together Respondent's Exhibit No. 4 on your previous examination?

A. Yes. I delivered those bonds and coupons to the agent of the Comptroller of the State on behalf of the East Tennessee, Virginia and Georgia Railroad Company, at divers dates between the 10th and
7 14th of June, 1870, taking such receipts therefor. And I also paid the sum of $11.10 in cash to make up the whole amount of the indebtedness of the East Tennessee, Virginia and Georgia Railroad Company at that time to the State of Tennessee.

2 Q. In addition to the receipts above referred to, did the East Tennessee, Virginia and Georgia Railroad Company afterwards receive from the Comptroller of the State of Tennessee a final receipt acknowledging the payment to him of the bonds,
8 coupons and cash, which you have just referred to?

A. It did. It was delivered on or about the eleventh day of August, 1870, and was and is as follows:

"COMPTROLLER'S OFFICE,
"Nashville, August 11, 1870.

"STATEMENT.

"Debt of E. T. & Va. R. R. Co., as per statement	$2,563,870 70	
"Debt of E. T. & Ga. R. R. Co., as per statement	1,553,890 40	
"Total amount due State July 1, 1870		$4,117,761 10

"CREDITS.

"I hereby acknowledge to have received from the East Tennessee & Virginia and East Tennessee & Georgia Railroad Companies the following number of bonds and coupons of the State of Tennessee in liquidation of said debt due to the State July 1, 1870, viz.:

3,835 State Bonds of $1,000 ea.	$3,835,000 00	
9,425 past due coupons $30 ea.	282,750 00	
Currency paid 4th National Bank, N. Y.	11 10	
		4,117,761 10

Signed.

ED. R. PENNEBAKER,

[Seal State of Tennessee.] *Comptroller, &c.*

"The above amounts represent the entire indebtedness of the railroads above mentioned, and have been credited with such amounts in my office.

ED. R. PENNEBAKER,
Comptroller, &c."

13 3 Q. Were you one of the purchasers of the Cincinnati, Cumberland Gap and Charleston railroad at the sale of that property under the State's lien?

A. I was one of the trustees who purchased that property on behalf of the East Tennessee, Virginia & Georgia Railroad Company.

4 Q. What was the purchase price?

A. $300,000, payable in Tennessee State bonds carrying the coupons due the first of January, 1871, and thereafter.

14 5 Q. Did you as such purchasers pay to the State of Tennessee that amount of the bonds of the State?

A. Yes; we paid those bonds to the State in accordance with the terms of the decree under which we purchased the property,

6 Q. Are you one of the trustees of the mortgage executed by the East Tennessee, Virginia & Georgia Railroad Company, dated June 1st, 1870; and, if so, please produce such mortgage.

15 A. I am one of the trustees, and will produce such mortgage to be annexed to this deposition.

(Mortgage produced, offered in evidence, and marked Respondent's Exhibit No. 1—W. H. D. L., Spl. Exr.)

7 Q. State how many bonds have been issued, and are now outstanding, under that mortgage.

A. There have been issued, and are now out-
16 standing in the hands of the general public, $3,123,-000 of those bonds.

8 Q. Are you also a trustee under the mortgage of the Knoxville & Ohio Railroad Company dated January 1st, 1876; and, if so, please produce such mortgage?

A. I am such trustee, and will produce such mortgage.

(Mortgage produced, offered in evidence, and marked Respondent's Exhibit No. 2—W. H. D. L., Spl. Exr.) 17

9 Q. How many bonds have been issued and are outstanding under that mortgage?

A. There are $500,000 bonds issued and now outstanding under that mortgage and in the hands of the general public.

10 Q. How many bonds have been issued and are now outstanding under the mortgage executed by the Memphis & Charleston Railroad Company and dated the 20th August, 1877. 18

A. There have been issued and are now outstanding in the hands of the general public $1,400,000 of the first class bonds mentioned therein generally known as first mortgage bonds of the Tennessee Division of the road, which are secured through an assignment of the Tennessee lien under the tripartite agreement. There have also been issued under such mortgage $558,000 of junior bonds which are not secured. 19

10 a Q. State, so far as you know, how and where the bonds issued under the mortgage just produced, executed by the East Tennessee, Virginia & Georgia Railroad Company and the Knoxville and Ohio Railroad Company and the Memphis & Charleston Railroad Company, are now held.

A. Those issued by the East Tennessee, Virginia & Georgia Railroad Company were mainly sold in Europe, and are held there now probably to the extent of four-fifths of them, and I should say that the remaining fifth is held mainly in New York, Philadelphia and Baltimore, by a good many different parties; the Knoxville and Ohio substitution bonds are held mainly in New York, Boston, Baltimore and Ohio, by sundry persons. 20

10 b Q. Did any of the present holders of those

bonds, so far as you know, know at the time they became purchasers thereof, of any claim on the part of the holders of the bonds of the State of Tennessee, that bonds loaned to railroads were in any way a lien upon the property of the company to which they were loaned?

A. They were all negotiated before the bringing of these suits, and so far as I know before any public announcement of any such claim as is now attempted to be set up in these suits, and before the public who became purchasers of these bonds could have known of the existence of such claim on the part or behalf of the Tennessee bondholders; as previously stated, I held some of these bonds and had seen the Davies and Davis opinion which I had referred to my counsel but never read; he telling me it was unsound. And this opinion came into my hands then because I was interested in Tennessee railroads, and was not in any way circulated as a public document, so far as I know or believe, for the purpose of putting the purchasers of bonds upon notice of the existence of such a claim.

11 Q. At the time of the settlement of the East Tennessee, Virginia & Georgia Railroad Company with the State in June, 1870, what was the amount of any of the arrears due for interest and sinking fund from the East Tennessee, Virginia & Georgia Railroad Company to the State of Tennessee?

A. In June, 1870, at the time of making its settlement with the State, the East Tennessee, Virginia & Georgia Railroad Company was in arrears to the sinking fund for the instalment thereof, which became due on the first day of January, 1870, to the amount of $152,640 or thereabouts, being four per cent. upon the principal of its indebtednesss to the State of Tennessee at that time, and was also in arrears for the non-payment of the interest on its indebtedness to the State, which be-

came due on the 15th of December, 1869, to the amount of $114,480 or thereabouts, and another interest instalment of a like amount was about falling due to the State on the 15th day of June, 1870; and by the laws of the State the railroad company, besides paying the semi-annual interest instalment, was required to pay to the sinking fund four per cent. annually on the first day of January, and under the law the property of the company was subject to be taken possession of and sold out by the State in consequence of the company's default in respect to the sinking fund.

12 Q. In July, 1877, at the time of the purchase by Iselins of the State lien upon the Memphis & Charleston Railroad, how much was the Memphis & Charleston Railroad Company, if any, in arrears in respect of the interest and sinking fund payments due to the State?

A. At that time the Memphis and Charleston Railroad Company was in arrears to the sinking fund for installments due for several years previously thereto to the amount of $342,541.12, or thereabouts, and was also in arrears for non-payment of interest on its indebtedness to the State, which became due on the 15th day of June, 1877, to the amount of $50,157.40, and also in arrears to the amount of $14,742.40 for the non-payment of a portion of the interest on its indebtedness to the State, which became due on the 15th day of December, 1876, and under the law it was subject to be taken possession of and sold by the State in consequence of such defaults to the sinking fund, and the State had been actually threatening to take possession of the road under its statutory rights.

13 Q. Have you procured from the records of the office of the Comptroller of the State of Tennessee a statement showing the amount paid in by railroads through the retirement of their debts to the State

29 and by sinking fund payments made since January, 1870, and the sales of railroads and other particulars in respect to these matters?

A. Yes, I have procured such a statement, and I now produce it to be annexed to my deposition, with a summary statement of the results thereof, showing payments to the State of bonds, coupons, and money by the railroads, including the payment previously made by the Louisville and Nashville Company, amounting in all to $22,664,827.28.

30

(Statement produced; marked Respt's Exhibit No. 3—W. H. D. L., Spl. Exr.)

14 Q. State, as nearly as you can, what was the amount of the total bonded indebtedness of the State on the 20th day of January, 1870?

A. As nearly as I can state it, and I was pretty familiar with the debt of Tennessee, it was about $37,854,734 of principal, on which there was past
31 due interest amounting to about $2,346,070, making a total of about $40,200,805, about $21,962,827 of which has since that date been realized from the disposition by the State of the railroad assets which it then held.

15 Q. Does the above indebtedness embrace the liability of the State as endorser on the city and railroad bonds endorsed by it?

A. It does not. In addition to the above indebtedness the State was liable as endorser on city and
32 railroad bonds to the extent of about $2,196,000; most, if not all, these endorsed bonds were outstanding on the 20th of January, 1870.

16 Q. Was the settlement made by the Louisville and Nashville Railroad Company with the State of Tennessee of its indebtedness for bonds loaned by the State open and public and notorious?

A. Yes, it was, and besides other publicity given

to it, it fully appeared by the proceedings in the 33
Legislature of the State of Tennessee in the year 1865, including a resolution adopted May 5, 1865, appointing commissioners to settle with that Railroad Company, and the said Commissioners did settle with the Railroad Company, and made a report of that fact to the Legislature of the State of Tennessee, dated November 18, 1865. I produce a copy of this resolution and report to be annexed to my deposition.

17 Q. Was the pendency and passage of the Acts 34
of the Legislature of the State of Tennessee of 1869-70, in respect to the relations between the railroads and the State of Tennessee, open and public and notorious?

A. I was not present in Nashville at either of the sessions of 1869 or 1870, so far as I now remember, but it was a matter of great public concern, provoked considerable discussion and comment, all of which, including the Acts, were published in the newspapers, and attracted a good deal of attention. 35

18 Q. Was the making of settlements between the different railroad companies of Tennessee and the State, in respect of their indebtedness, open and public and notorious when the same took place?

A. Yes, in a certain sense it was public, open and notorious; my firm conducted a very large proportion of the settlements of what were called the solvent roads, or the class that retired their debts and were not sold out, and while we did not state to the public generally while purchasing the bonds that we 36
would at a certain day retire the debt of this or that road, it was nevertheless a fact well known generally, and I always mentioned it to the bondholders of the State, many of whom came in to get information respecting the prospects for the resumption of interest and the settlement of the State debt, and uniformly, and I believe universally, I spoke of this scheme of

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retiring the railroad's debts and reducing the indebtedness of the State through these laws and through the sale of the insolvent roads as the only feasible remedy which was open to my mind for the resumption of the interest on the part of the State; in the course of these business transactions I applied to a number of prominent houses in New York and Philadelphia, and the agents of some foreign houses, to induce them to join in furnishing the money with which to conduct these settlements; and in the instance of the East Tennessee, Virginia & Georgia Road, I went to Messrs. E. D. Morgan & Co. and made personal application to Gov. Morgan, with whom I had formed a passing acquaintance, mainly growing out of his interest in the bonds of the State of Tennessee, my former residence there having given me, as he supposed, some opportunity of obtaining more correct information as to the probable course of Tennessee in respect to its indebtedness; and hence when I was ready to undertake the negotiation for the settlement of the indebtedness of the East Tennessee, Virginia & Georgia Railroad Company to the State, my mind first fell on his house as being a strong house of high standing and well known in the streets of New York, and as the proper parties to associate with me in procuring the necessary funds. I went to the office of E. D. Morgan & Co. on several occasions, and after conversing more or less generally on the Tennessee debt subject, I solicited him to make an exchange of their Tennessee State bonds for railroad bonds, to be issued by the East Tennessee, Virginia & Georgia Railroad Company under the acts of 1869-70. I first suggested this method of making an exchange of Tennessee bonds for the bonds of the company on some basis to be agreed upon to be satisfactory to all parties, to enable the company to make a settlement with the State and close out their indebtedness.

I told Governor Morgan that I thought that if the 41
scheme that was contemplated under the acts of 1869 and 1870, and the act for the sale of the insolvent roads could be carried out it would certainly relieve the State, and he agreed with me in thinking so, and that it would enable it to restore its credit. I cannot say whether or not Governor Morgan ever seriously considered the subject of joining with me in the retirement of the debt, but I can certainly say that I explained to him fully my intention in regard to settling with the State the debt which the 42
East Tennessee, Virginia & Georgia Railroad Company owed to it, and he fully approved of such a course being pursued as the best means, and I may say the only means by which the State of Tennessee could be placed in such a position as would enable her to manage her debt most advantageously to all her creditors and herself. And as I have previously stated in this deposition, I had frequent talks with Mr. Peter Geddes about the proposed settlement of railroads with the State, and especially and par- 43
ticularly about the settlement of the Memphis and Charleston Railroad Company's indebtedness to the State, in all of which he showed the same anxiety that I did to have the debts of the railroads to the State settled as proposed, and the State and the railroads divorced, so to speak, from each other. In fact he was exceedingly solicitous to have this separation entire and complete through settlements made by the railroad companies under the acts of 1869 and 1870, and by the sale of the insolvent 44
roads.

19 Q. Were the sales of the insolvent roads also open and public and notorious?

A. Yes, they were.

20 Q. Did you ever know or hear of any action or proceeding being taken of any kind by any bondholder of the State of Tennessee, either in opposi-

45 tion to the settlement with the Louisville & Nashville Railroad, or the passage of the acts of 1869 and 1870 in respect to the relation between the railroads and the State or the settlements thereunder, or to the sales of the insolvent roads made by the State?

A. No, I do not think any such action or proceedings were ever taken; I certainly never heard of any.

21 Q. Have the Knoxville and Kentucky Railroad
46 and the Cincinnati, Cumberland Gap and Charleston Railroad been held by and in possession of the Knoxville and Ohio Railroad Company and the East Tennessee, Virginia and Georgia Railroad Company or R. T. Wilson and C. M. McGhee, trustees, since the time of the purchase of those respective roads?

A. They have been held continuously in the undisputed possession as to the Knoxville and Kentucky Railroad of the Knoxville and Ohio Rail-
47 road Company, and as to the Cincinnati, Cumberland Gap and Charleston Railroad of R. T. Wilson and C. M. McGhee, trustees, and afterwards of the East Tennessee, Virginia and Georgia Railroad Company as transferrees from them.

22 Q. Have you been familiar with the dealings in the New York market in respect to the State bonds of Tennessee since the year 1866?

A. I came here in the summer of 1866, and commenced business in the fall of that year, and since
48 that time I have been more familiar than almost anyone else in New York with the dealings in New York in regard to the bonds of the State of Tennessee.

23 Q. State whether there has been at any time in New York any difference in price between bonds loaned to railroad companies and bonds issued by the State for other purposes, or between those

loaned to railroads of undoubted responsibility and 49
those loaned to railroads which had been sold out by the State.

A. There never has been any difference, nor is now any such difference in the market price of the bonds in the city of New York, except that shortly before the commencement of these suits I heard that one of the complainants was offering a small premium to exchange bonds which he had for bonds loaned to solvent railroads.

24 Q. Did you ever know or hear of any of the 50
bonds of the State of Tennessee being bought or sold as carrying any lien upon the railroad to which they had been loaned?

A. I never did, with the exception mentioned above.

25 Q. To what extent, as nearly as you are able to say, have been your dealings in bonds of the State of Tennessee?

A. It is difficult for me to estimate the exact amount; I have bought, however for the purpose 51
of retiring the debts of the roads to the State, and for making payments for sold roads purchased, about fifteen million dollars of these bonds, and I should think that the dealings of my house, including the number bought for railroad purposes as just stated, would aggregate fully twenty millions of dollars; and I never did in the purchase of all these bonds hear of them carrying a lien on the roads to which any of them were loaned, nor did I ever sell a bond of the State of Tennessee which I 52
represented, or authorized any one to represent, as carrying a lien upon the road, nor did I ever hear of any such understanding on the part of any purchaser from me.

26 Q. What proportion of the bonds dealt in by you were dealt in at the Stock Exchange in the City of New York?

53 A. Nearly all of them; in fact I do not now remember that we ever bought as much as a hundred thousand dollars of bonds off the Stock Exchange; the dealings were almost universally confined and always have been, as far as my information goes, to the New York Stock Exchange.

27 Q. Please state at what time since the war the State of Tennessee has paid interest upon its obligations, and during what portion of the time she has been in default thereon?

54 A. She has been in default on her interest obligations all the time since the war, except that she paid installments of interest in 1867 and 1868, and after the settlements were mainly made between the railroads and the State; she paid three installments of interest in 1874 and 1875, since which time no interest has been paid by her upon any of her obligations.

55

MARCH 29, A.D. 1880.

Present—Counsel as before.

Cross-examination by Mr. ANDREWS:

28 x Q. Did not a holder of Tennessee bonds, about the year 1869 or '70, make demand or claim upon one of the railroads, of which you are an officer, or upon you as their representative in respect of their
56 liability for the payment of the Tennessee bonds issued to them?

A. No holder of a Tennessee bond issued to a railroad with which I have had any connection, or to any other railroad, ever made any demand or claim upon such railroad, so far as I have any knowledge or recollection upon the subject, until these suits were brought.

29 x Q. What did you get Mr. Southmayd's opinion for? 57

A. I got it as to the legal status of the question—what the law meant. I gave him the Act and asked for his interpretation of it.

30 x Q. Why did you not communicate to James A. Roosevelt and James P. Wallace that the committee of Tennessee bondholders had obtained the opinion of Judges Davies and Davis, to the effect that Tennessee State bonds were liens upon the railroads to which they were issued? 58

A. Firstly, as I have stated before, I did not believe it was sound, and was so advised by Mr. Southmayd. My impression of it at the time it was obtained was that it was intended as a mere scare against somebody or other.

Further, as it was addressed to Mr. Donaldson, as chairman of the Tennessee bondholders' committee, it was their business to circulate it if they believed in its soundness. Certainly I did not consider it my business as I did not believe it. 59

31 x Q. When did you first know Mr. Peter Geddes?

A. I should think in 1873, '4 or '5, somewhere along there, but I really do not remember.

32 x Q. Did you know him in 1875?

A. I am inclined to think I did.

33 x Q. Would you swear that you knew him before 1876?

A. I will not swear exactly when my acquaintance began with him more precisely than I have 60 done.

61 APRIL 3d, 1880.

Present—MR. TWEED, for Respondents.
MR. ANDREWS, for Complainants.

34 x Q. Did you know Mr. Peter Geddes in 1879?

A. Yes.

35 x Q. Did you know him in 1878?

A. Yes.

36 x Q. Did you know him in 1877?

62 A. Yes; I think I did.

37 x Q. Did you know him in 1876?

A. I think so; it is my recollection that I did.

38 x Q. In 1876 how many roads in Tennessee had not delivered to the State bonds under these substitution and selling out laws?

A. As I now remember, the Memphis & Charleston, Mississippi & Tennessee, Mississippi Central, Tennessee & Pacific, and, probably, the Knoxville & Charleston, but some of these roads had delivered
63 some bonds to the State—I refer to the sold out roads.

39 x Q. Is not the Act for Substitution, referred to in your deposition as the Act of July 25, 1869, intended to be referred to as the Act of February 25, 1869?

A. I don't know where in my deposition I have referred to this Act, but I think the latter is the date of the Act.

40 x Q. Were not the substitution bonds of near-
64 ly every railroad in Tennessee that issued them, except the Memphis & Charleston, and perhaps two inferior or small roads, issued and sold before 1874?

A. I can only speak definitely as to when they were issued and sold as to the following roads: The substitution bonds of the E. T., Va. & Ga., the Mobile & Ohio, Nashville & Decatur, Nashville, Chattanooga & St. Louis, Knoxville & Ohio, as I now re-

member, were issued and sold before 1874, or mainly so. 65

41 x Q. Is not this pamphlet the prospectus to which Chas. Tracy's opinion is attached?

A. I think so.

(Complainants' counsel offers said pamphlet in evidence, except opinion of Chas. Tracy already in evidence.)

(Marked Complainants' Exhibit No. 1, W. H. D. L., Spl. Exr.) 66

R. T. WILSON.

Subscribed and sworn to before me, this 3d day of April, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the City of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the City of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined, and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence; and that the exhibits hereto annxed, marked Complainant's Exhibit No. 1, W. H. D. L., Spl. Exr., and Respondent's Exhibits Nos. 1, 2, and 3, W. H. D. L., Spl. Exr., were introduced in evidence in said cause during the taking of said deposition. 67 68

Dated April 3, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

69 RESPONDENTS' EXHIBIT NO. 1,
W. H. D. L., Sp'l Ex'r.

DEED OF TRUST OR MORTGAGE.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY,

To Philo C. Calhoun, Richard T. Wilson and
70 *Adrian Iselin,*

Of the City of New York.

DATED JUNE 1ST, 1870.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY

71 *to*

PHILO C. CALHOUN, RICHARD T. WILSON and ADRIAN ISELIN, *Trustees, of the City of New York, Dated June 1st*, 1870.

This Indenture, made this first day of June, one thousand, eight hundred and seventy, between the
72 East Tennessee, Virginia & Georgia Railroad Company, a corporation created, organized and operated under and in pursuance of the laws of the States of Tennessee and Georgia, and herein designated party of the first part, and Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, all of New York city, and herein designated parties of the second part.

Whereas, the East Tennessee, Virginia and Geor-

gia Railroad Company was formed and has its ex- 73
istence by virtue of law, by the consolidation of the East Tennessee & Virginia Railroad Company with the East Tennessee and Georgia Railroad Company, and whereas, by virtue of such consolidation, and of the laws under which the said first party was created, and of it organization, and in the exercise of its corporate rights, powers and franchises, the said first party became and is invested with all and singular the corporate rights, powers, privileges and franchises, and likewise with, and owner and occu- 74
pier of all property, real, personal and mixed, and of all debts due, things in action, rights of way, contracts, and all and every other interest whatsoever, which were held, owned and lawfully possessed or exercised by, or which in any way or manner belonged or appertained to the East Tennessee & Virginia Railroad Company, and the East Tennessee & Georgia Railroad Co., corporations created and organized under and by virtue of the laws of the State of Tennessee, with certain rights and priv- 75
ileges under the laws of the State of Georgia, as fully and effectually as the same rights, powers, privileges, franchises, property, debts, contracts, rights of way and other interests were held, owned and exercised by the said last-named corporations, or either of them, at the time of the consummation of the organization executing these presents, but subject however, to all the then existing debts, liens, and other liabilities incurred, created or suffered by the same corporations, or either of them; such 76
debt, liens and liabilities having been, in the consolidation hereinbefore named, legally assumed by said party of the first part hereto, and

Whereas, the State of Tennessee did, at various times, extend aid by loan of the bonds of said State unto the East Tennessee & Georgia Railroad Company, and unto the East Tennessee & Virginia

Railroad Company, for which aid the said State of Tennessee does hold a statutory lien upon the Railroad property and franchises of said last-named corporations; and

Whereas, by laws of the said State of Tennessee, it is provided that the said corporations may make and issue first mortgage bonds covering the Railroad, property, rights and franchises of their corporations, which bonds may be issued as rapidly as bonds of the State of Tennessee are surrendered up to said State by such companies in part payment and discharge of the indebtedness of said corporations to the State of Tennessee for its bonds issued in aid of said corporations to an amount equal to such payments so made from time to time on account of the said indebtedness to the State, and that such bonds so issued, being certified by the Comptroller of the State of Tennessee, acting by himself or through an agent in New York, as in said act prescribed, shall be a lien pro rata in amount and of equal validity and effect with the unretired part of the said State indebtedness upon such railroads, property, franchises, fixtures, and materials.

And Whereas, To enable the said party of the first part to liquidate, pay, satisfy and fully discharge the said indebtedness to the State of Tennessee, and also for the purpose of perfecting its line of railway, and enlarging the capacity, and extending the operating facilities for the business thereof, the said party of the first part has, by the Board of Directors and by convention of the stockholders, extrusted with the control and management of its affairs.

Resolved, To borrow money to an amount not exceeding in the aggregate the sum of ($3,500,000,) three million and five hundred thousand dollars,

and to that end to issue, and raise money by the 81
sale and negotiation of its bonds bearing date the first day of June, Anno Domini One Thousand Eight Hundred and Seventy.

The following is the form of bond and coupon, but may be issued in such denominations as to suit the convenience of the Company:

FIRST MORTGAGE BONDS.

UNITED STATES OF AMERICA.

82

$1,000. $1,000.

The East Tennessee, Virginia and Georgia Railroad Company promise to pay to the holders of this bond, on the first day of July, One Thousand, Nine Hundred ——— for value received, the sum of

ONE THOUSAND DOLLARS.

in lawful money of the United States, in the city of New York, with interest at the rate of seven per 83
cent. per annum payable semi-annualy, on the first day of July and January of each year on delivery of the annexed interest warrant.

This bond, with others of like tenor and date, amounting in the aggregate to a sum not exceeding three millions, five hundred thousand dollars, is secured by a first mortgage on the railroad and franchises of said company, made to Philo. C. Calhoun, Adrian Iselin and Richard T. Wilson, and is entitled to the benefit of a sinking fund as set forth 84
in the deed of trust.

This bond shall pass by delivery or by transfer on the books of the company. After a registration of ownership, certified hereon by the transfer agent of the company, no transfer except on the books of the company shall be valid, unless the last transfer be to Bearer.

85 IN WITNESS WHEREOF, The said East Tennessee, Virginia and Georgia Railroad Company has caused this Bond to be signed by its President or Vice-President and Secretary, and its corporate seal to be hereunto affixed at the city of Knoxville, Tennessee, the first day of June, Anno Domini, One Thousand, Eight Hundred and Seventy.

President.

{ L. S. }

86 *Secretary.*

And the coupons annexed to which bonds are in the following form :

$35.00. $35.00.

No. The East Tennessee, Virginia and Georgia Railroad Company will pay the Bearer, in the city of New York, thirty-five dollars in lawful money of the United States, on the first day of for semi-annual interest on bond

87 No.

Secretary.

FORM OF CERTIFICATE OF TRUSTEES.

We certify that this Bond is one of a series not exceeding three million, five hundred thousand dollars, described in and secured by the deed of trust or mortgage mentioned herein, bearing date, first of June, Anno Domini, One Thousand Eight

88 Hundred and Seventy, which is duly recorded.

NOW THEREFORE, THIS INDENTURE WITNESSETH, That for the purposes of securing and making more sure and certain the payment of the sums of money mentioned and provided for in the bonds bearing even date herewith, and each and every one of them, with the interest thereon accruing after actual issue, according to the true intent and meaning thereof, and in consideration of the recited premises,

the loan of said money and the sum of one dollar to 89
the said first party in hand paid by the parties of
the second part at and before the ensealing and de-
livery hereof, the receipt whereof is hereby ac-
knowledged by the said party of the first part, the
East Tennessee, Virginia and Georgia Railroad
Company, the party of the first part aforesaid, has
*granted, bargained, sold, assigned, transferred
and conveyed*, and by these presents *does grant,
bargain, sell transfer and convey* unto Philo C.
Calhoun, Richard T. Wilson and Adrian Iselin, the 90
parties of the second part aforesaid, their heirs and
assigns forever, and to their successor or successors
in the trust and assigns, all and singular, the estate
and property, real, personal and mixed, and all
fixtures, rights, privileges; franchises, easements,
rights under leases, terms and parts of terms, agree-
ments, covenants and contracts of all and every
kind, held and owned or occupied by the said party
of the first part, including all and singular the Rail-
roads and Railways of said Company from and in- 91
cluding the terminus and depot at Bristol, in the
County of Sullivan, State of Tennessee, and thence
to the City of Chattanooga, in the County of Ham-
ilton, in the State of Tennessee, and including the
line from Cleveland, in the County of Bradley,
State of Tennessee, to the City of Dalton, County,
of Whitfield, State of Georgia.

TOGETHER WITH ALL AND SINGULAR, The lands,
tracks, lines, rails, bridges, ways, rights of way,
and materials, buildings, piers, wharves, erections, 92
fences, walls, fixtures, privileges, franchises, rights
and interests, real estate, personal property, choses
in action, leasehold and other things, of, and be-
longing to said party of the first part, of every
kind, nature and character, in either of the said
States of Tennessee and Georgia; and *all* the tolls,
income, issues and profits, to be had or derived

from the same, or any part or portion thereof, or from any part or portion of said term or terms, or either thereof; and all right to receive or recover the same, and all railway stations and depots, with all the appurtenances necessary or convenient for the sole, complete and entire use and operation, as well as maintenance of the said roads or railways, owned or leased by said first party; and also all the locomotives, engines, tenders, cars, carriages, tools and machinery, belonging or appertaining to said railroads and railways so owned as aforesaid; (excepting and reserving therefrom so much of the rolling machinery and other personalty as was purchased from the Government of the United States, in part, by the said East Tennessee and Virginia Railroad Company, and in part by the East Tennessee and Georgia Railroad Company, in or about the Autumn of the year eighteen hundred and sixty-five;) and also all improvements or additions, made or to be made, to any or all of said properties, estates, railroads or railways, and their appurtenances, by said party of the first part or by others; also all and every other estate, interest, property or thing, as well real or mixed as personal, which the said party of the first part own and hold, or may and shall hereafter acquire and hold, necessary or convenient for the use, occupation, operation and enjoyment of all or any of its said railroads, railways, leases and property, rights, privileges and franchises, or any part or portion thereof; and also all rights and privileges to use the said road-beds, tracks, sidings, turnouts and switches, constructed at the execution of these presents, or which may or shall be hereafter constructed for the convenient use of said railroads or railways, or any of them, owned or operated by said first party, as fully and as effectually as the said Company, party of the first part,

is or may be by law entitled to have or acquire. 97
But nothing herein contained shall be held, understood or construed to prevent said party of the first part from selling, hypothecating, or otherwise disposing of any money or securities received in payment of shares of capital stock, or from proceeds of any debts or claims now due to said Company, or from disposing of, by and with the consent in writing of the parties of the second part, or their successors in the trust, any lands or other property and effects not essential or necessary to be retained for 98
the said roadways, depots or station grounds, nor required for the construction or convenient use of the said railways, nor from selling shares, nor from collecting moneys due on capital stock, subscriptions or otherwise, or for other things, provided the said first party shall diligently proceed to apply all such means and proceeds to improving and equiping of said railway and other like necessary purposes thereof; and provided, also, that no default shall have been made, and at the time remain, in the pay- 99
ment of the interest or principal of any of the bonds hereby secured. But even after default in the payment of interest, the Trustees shall have full power, in their discretion, upon the written request of the party of the first part, to convey, by way of release or otherwise, to the persons designated by the said party of the first part, any lands acquired or held for the purposes of stations, depots, shops or other buildings, and no longer required therefor; and shall also have power to convey as aforesaid, on like 100
request, any lands or property which, in the judgment of the Trustees, shall not be necessary for use in connection with said railroad, or which may have been held for a supply of fuel, gravel or other material, and also to convey as aforesaid, on like request, any lands not occupied by the then existing track, which may become disused by reason of

a change of the location of any station-house, depot, shop or other building connected with the said railroad, or any straightening or alteration of the line of the road and such land occupied by the track, and adjacent to such station-house, depot, shop or other buildings, as the said party of the first part may deem it expedient to disuse or abandon by reason of such change, and to consent to any such change, and to such other changes in the location of the track, or depot, or other buildings, as shall have become expedient; and to make and deliver the conveyances necessary to carry the same into effect; provided that any lands which may be acquired for permanent use, in substitution for any so released, shall be conveyed to the Trustees, upon the trusts of these presents; and the Trustees shall also have full power to allow the said party of the first part from time to time to dispose of such portions of the equipments, machinery and implements at any time held and acquired for the use of the said railroad as may have become unfit for use.

To Have and to Hold the said estate, property, rights, privileges, franchises and interest above conveyed or transferred or intended so to be, together with all and singular the emoluments, income and advantages, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereto, unto the said Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, parties of the second part, and their successors and assigns, on the trusts, and for the uses and purposes herein declared and none other.

And it is hereby declared that the said bonds for three million, five hundred thousand dollars hereby secured, are to be issued under and in pursuance of

and in accordance with the provisions of the Act of 105
Legislature of the State of Tennessee, entitled "an Act to liquidate the State debt contracted in aid of Railroad Companies in the State of Tennessee," passed February 25th, 1869, and the Acts amendatory thereof, and are to to be certified by the Comptroller of the State of Tennessee, either by himself or an agent in New York, and registered in a book kept for that purpose, as provided by the second section of said Act of February 25th, 1869, and that the said bonds hereby 106
secured are to be issued only as fast as permitted by said Act of February 25th, 1869, that is to say, in amounts from time to time equal to the payments made by the said company to the State of Tennessee, on account of the company's indebtedness to the State for its bonds issued in aid of said railroads by surrender of State bonds in discharge of such indebtedness as permitted by said Acts, and that such bonds hereby secured, which shall be so from time to time issued, before the entire discharge of the 107
company's said debt to the State, are to be a lien *pro rata* in amount and of equal validity and effect with the unretired part of the said State indebtedness upon the said railroads, property, franchises and other things hereby mortgaged, as by said Act is provided.

PROVIDED ALWAYS that these presents are made and executed upon the express condition that if the said party of the first part shall well and truly 108
pay or cause to be paid to the holders of the said bonds or obligations intended to be secured hereby, and each and every of them after the same shall be issued, the principal sums of money therein respectively mentioned, at the maturity thereof, according to their true intent and meaning, with the interest thereon accruing at the times and in the way and

manner therein, and in the coupons provided, according to the true intent and meaning of these presents, that then and from henceforth this *Indenture* and the estate hereby granted shall cease, determine and be utterly void and of none effect, without any other release or formal reconveyance, re-entry, acknowledgment of satisfaction, or any other act whatsoever. And the said party of the first part, in consideration of the premises, hereby covenants and agrees to and with the said Philo. C. Calhoun, Richard T. Wilson and Adrian Iselin, their successor and successors in said trust and assigns, that the said first party will at any time or times hereafter, upon the reasonable request of the said parties of the second part, their successors or assigns, execute and deliver, or cause to be executed and delivered, all and every such further and other reasonable deeds, conveyances, assignments and assurances in the law for the better and more effectual vesting and confirming the premises, property, rights and interests hereby granted or intended so to be, and especially for conveying any property subsequently to the date hereof acquired by the said party of the first part, and comprehended in the description contained in this indenture, if any such there be, to the said parties of the second part as trustees for the uses and purposes of this indenture, and to their successors and assigns, as by them, or their counsel learned in the law, shall be reasonably devised, advised or required ; and further, that the said first party will do and perform all the things on the part of the said first party to be done and performed as hereinbefore set forth, and faithfully apply all the money and other things arising from the issue of said bonds, to the purposes hereinbefore recited or mentioned as the objects thereof ; and further, that the said first party will pay unto the holder or holders of the said bonds respectively, the

said principal sums of money therein respectively 113
mentioned and as expressed therein, and the interest thereon as the same shall become due and payable, and the moneys to the trustees of the Sinking Fund as hereinafter provided ; and it is hereby further covenanted, granted, declared and agreed, that in case of default in payment thereof, either principal, interest money, or sinking fund secured hereby, and the continuance of such default for six months after such default shall first have been made or suffered, the said first party shall and will, on demand 114
made after the expiration of such six months by the parties of the second part, their successors or assigns, trustee or trustees, for the time being, or their agent or agents, duly authorized in writing. assign and transfer in due form to them or to their agent or agents, so authorized, the actual possession of all the herein granted and conveyed property and premises, and herein recited and mentioned, or intended to be embraced in this trust; and further, that the expense of taking, holding and managing said 115
property and premises if possession is taken, shall be paid from the income, and if necessary, from the sale of the property and premises, by the said trustee or trustees, as the case may be, for the time being ; and further, that in such case, the parties of the second part, their successors in said trust and assigns, shall and may, by themselves or their officers and agents, take and receive, collect and have the income and profits of the said railways and other property, first applying the same to the pay- 116
ment and discharge of all current necessary operating expenses and repairs, including the expenses hereinbefore mentioned, and all taxes and other similar charges; and next to the payment of all sums of money due and payable upon the aforesaid bonds, issued by said first party, and hereby secured according to the tenor thereof ; and further, that

the said parties of the second part, their successors in said trust, or assigns, having entered as hereinbefore mentioned, into the full possession of the premises, property and estate hereby conveyed, or without having entered into such possession (the said default still continuing) at his or their discretion, and with the approbation of such Court or Courts of Record, either State or Federal, as may have jurisdiction over like trusts, in the State of Tennessee, *may*, or on the written request of the holders of at least one-third of the bonds hereby secured, and then outstanding unpaid, *shall* proceed to sell and dispose of, or cause to be sold and disposed of, all of the premises, property rights, interests, franchises and estate hereby conveyed, or so much thereof as shall be necessary to pay and discharge the principal and interest according to the tenor thereof, of all of such of said bonds hereby secured and then outstanding as may have been issued by said first party, together with all benefit and equity of redemption of said party of the first part therein, by public auction, either in the City of Knoxville, Tennessee, or in the City of New York, to the highest bidder, having previously given public notice of the time, place and terms of said sale, and of the property to be sold, by publishing the same in at least two newspapers of good general circulation, in each of the said cities, and wherever else the trustees may deem expedient or required by law, for the period of at least ninety days previous to such sale ; and as the attorney or attorneys of the said first party, for that purpose by these presents, duly constituted and appointed, make, execute and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, granting and assuring to said purchaser or purchasers all such estate, right, property, franchises and interest, and to the

same extent as the said first party had therein at 121
the date hereof, or at any time subsequent, and also a good and sufficient transfer and assignment of said personal property, choses in action, contracts and leases.

And out of the moneys arising from such sale or sales, it shall be lawful for and the duty of such Trustees, after first retaining the costs and charges of advertisement, and of the said sale of the premises, and all other sums of money which said trustees, or their successors in said trust, may have 122
been obliged to pay, by reason of their taking possession of, and operating said premises, and a reasonable allowance for their own services, and for legal professional advice, aid and assistance, in effecting and consummating said possession, operation and sale; and also to pay, in so far as such proceeds shall suffice therefor, the principal and interest, whether then due or yet to become due, which shall then remain unpaid on said bonds remaining issued and outstanding, and hereby secured 123
as aforesaid, for the benefit of, and to be paid to the holders thereof, and then restore the residue of the said proceeds, if any there be, to the said party of the first part; it being hereby expressly understood that the bonds issued by said first party, and secured by these presents, shall be ratably receivable, if desired by the holders thereof, in payment of said sale by said trustees or their successors, to the extent of the amount of the net proceeds of such sale properly applicable to the 124
payment of such bonds respectively; and the said sale, when fully consummated, shall be a perpetual bar, both in law and equity, against the said party of the first part, and all persons claiming or to claim the premises, or any part thereof, by, through or under said party of the first part, subsequent to the date of these presents; *and in no*

125 *case* shall any claim or advantage to be taken of any valuation, appraisement or extension laws by the party of the first part, nor any injunction or stay of lawful proceedings hereon, nor shall any process be applied for or obtained by the said party of the first part to prevent or obstruct such lawful entry or sale as aforesaid, but the same are hereby expressly waived by the said party of the first part.

The party of the first part further agrees that at the expiration of two years from the date hereof
126 and every twelve months thereafter, an amount of money derived from the net earnings of said road, equal to one per cent. on the amount of bonds issued and outstanding under provisions hereof shall be set apart as a sinking fund for the redemption of the bonds secured by these presents, and it shall be the duty of the party of the first part to invest the said sinking fund and the interest accruing thereon in the bonds herein secured, at a rate not exceeding ten per cent. above par and accrued interest. And
127 the bonds so purchased shall be immediately registered, stamped or endorsed as irrevocably belonging to said sinking fund, and not further transferable, and said bonds and coupons when stamped, registered and assigned to said sinking fund, shall remain in force only for the purposes thereof, and shall by said stamping, transferring or registering, become void and cancelled thereafter for all other purposes. In case the bonds herein secured cannot be purchased as above within three months after
128 maturity and payment of money for account of the sinking fund, then shall such other good securities, as the parties hereto may agree upon, be purchased, and assigned to said sinking fund, and all shall be held deposited with such depository and in manner as the parties hereto shall from time to time mutually agree upon, and the interest accruing on the sinking fund shall be collected by the party of the first part and invested as hereinbefore provided.

AND THIS INDENTURE further witnesseth, that 129
these presents and the said bonds hereby secured or intended so to be, are made, executed and issued or delivered, upon the terms, conditions and agreements following, that is to say:

First. That the actual possession, use, management and control of all the hereinbefore granted estate, property and premises, shall be, and remain in and with the said party of the first part, so long as the bonds so issued shall be and remain without 130
forfeiture or default in respect of interest or otherwise.

Second. That in the case of any vacancy in the said trusteeship hereunder, by the incapacity to act, death or resignation of either of the said trustees, or from any other cause, all his estate, right, interest, power and control, shall be thereupon divested, and cease and determine, but without destroying, or without any discontinuance of the trust: and the said party of the first part *shall*, or upon default 131
or omission to take proceedings therefor for thirty days after notice of such vacancy or incapacity, the holders of not less than thirty-three and one-third per centum in amount of said bonds hereby secured, *may* apply to any of the Courts having jurisdiction in the premises, in the State of Tennessee, to appoint a new Trustee or Trustees to supply the vacancy; and such proceedings may be had, and appointments made, as often as the like occasion may require the appointment of a Trustee to execute the 132
trust herein declared; and when so appointed, such new Trustee shall thereupon become vested for the purposes of the said trust, with all the estate, rights, interests, power, property and control, hereby conveyed or granted to, or vested in the said Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, by these presents, without any further as-

133 surance, grant or conveyance of the same as fully and effectually as if such appointment had been originally made herein. But if the same shall be necessary, both the said party of the first part, and such new Trustee, or either of them, shall make, execute and deliver all necessary conveyance and agreements, and grants and powers, and authorities for that purpose.

And it is further understood and agreed by and between the parties to these presents, that the said
134 parties of the second part, their successor or successors in said trust, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts or negligencies of any agent or agents, necessarily employed by them, when such agent or agents are selected with proper discretion or with the approbation of the said party of the first part. And the officers of the said Railroad Company shall have at all times the right to inspect the books kept by the receivers of the
135 road and their agents.

And This Indenture further witnesseth that the said parties of the second part hereby accept the aforesaid trusts, and also covenant and agree to and with the said party of the first part, to execute the same upon the terms and conditions hereinbefore as well as hereinafter mentioned and provided, and which said terms and conditions are hereby mutually agreed to and upon, by both of the parties to
136 these presents, and that the said trustees and their successors may employ and advise with legal counsel, and that the expense thereof, as well as other personal expenses of the said Trustees, for the time being, in the discharge of said trusts, and all other, their reasonable and proper charges and expenses thereof, including their compensation, shall be paid by the party of the first part, as they are incurred,

or otherwise out of the trust, estate or income on 137
which or to which they are chargeable; and likewise that the said trustees or their successors shall not be required to act in the execution of said trusts, except at their own option, unless the party requesting so to do shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur, or be at in so doing; and that when called upon to act they shall be, and are hereby authorized and invested with full power, at their option, under advice of legal counsel, to submit all 138
questions of law or fact arising in the execution thereof to arbitrators; that they, in the execution of said trusts, may employ agents and attorneys in fact to act in their behalf, whenever required to act as aforesaid, except when they may be or are required by law to act personally; and also, that all covenants and agreements hereinbefore contained or implied may be executed specifically by and through any of the said Courts of competent jurisdiction as practised by them in like cases of trusts. 139

It is fully understood that any two of the three Trustees aforesaid, or their successors, shall be sufficient for carrying into effect the purposes of this trust.

In Testimony Whereof the said party of the first part, in pursuance of authority, given by law, and in conformity with the order of the Board of Directors, has caused this Indenture to be signed by its President, or Vice- 140
President, and , Secretary, and the Corporate Seal of the Company affixed thereto, and the parties of the second part have hereunto subscribed their names and affixed their seals the day and year first in this Indenture mentioned.

141 EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD CO.,

BY THOS. H. CALLAWAY, [SEAL.]
President.

JAMES G. MITCHELL, [SEAL.]
Secretary.

W. C. HENNEGAR,
his
TOLBERT × HAMILTON.
mark.

142 P. C. CALHOUN, [SEAL.]
R. T. WILSON, [SEAL.]
ADRIAN ISELIN, [SEAL.]
Trustees.

F. E. LATHROP,
CHARLES NETTLETON,
As to P. C. C., R. T. W. and A. Iselin.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } ss.:

143 Be it remembered that on this 1st day of June, A. D. 1870, before me, Charles Nettleton, a Commissioner resident in the City of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Tennessee, to take the acknowledgment of deeds, etc., to be used or recorded therein, personally appeared Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, parties to the foregoing deed, with each of
144 whom I am personally acquainted, who severally acknowledged that they executed the said deed for the purposes therein mentioned as Trustees therein described.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

[SEAL.] CHARLES NETTLETON,
Commissioner for Tennessee in New York,
117 Broadway, New York City.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } ss.: 145

Be it remembered that on this 1st day of June, A. D. 1870, before me, Charles Nettleton, a Commissioner resident in the City of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Georgia, to take the acknowledgment of deeds, etc., to be used or recorded therein, personally appeared Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, to me personally known to be the individuals named 146 in and who executed the foregoing deed, who severally acknowledged that they executed the same for the purpose therein named and mentioned as Trustees therein described.

GIVEN under my hand and official seal,
this 1st day of June, A. D. 1870.

[SEAL.] CHARLES NETTLETON,
Commissioner for Georgia in New York,
117 Broadway, New York City. 147

STATE OF TENNESSEE, }
KNOX COUNTY. }

On this, the 8th day of May, 1871, before me, J. L. A. Blany, Clerk of the County Court, in and for the County and State aforesaid, personally appeared J. G. Mitchell, to me personally known and to me known to be Secretary of "The East Tennessee, Virginia and Georgia Railroad Company," and 148 being by me duly sworn, did depose and say, that he is now, and was at the time the foregoing Deed in Trust was executed, Secretary of said Corporation, and that Thomas H. Callaway was at that time its President; that they executed said Deed for the purposes in said Deed set forth and expressed for and in behalf of said Corporation, subscribed their

149 names as Secretary and President, and affixed the seal of said Corporation thereto, by authority of said Corporation; and at the same time Wm. C. Hennegar and Tolbert Hamilton, personally known to me to be the subscribing witnesses to said Deed appeared before me, and being duly sworn, severally deposed and said, that they were well acquainted with the aforesaid J. G. Mitchell and Thomas H. Callaway, and knew that they were Secretary and President of "The East Tennessee, Virginia and
150 Georgia Railroad Company," and that they executed the foregoing Deed in Trust in the manner hereinbefore stated, and delivered the same as the Act and Deed of said Corporation for the purposes in said Deed set forth and expressed, on the day it bears date.

WITNESS my hand and Official Seal of
[SEAL.] office, at office in Knoxville, the 8th day of May, 1871.

151 J. L. A. BLANY, *Clerk.*

STATE OF TENNESSEE, }
Sullivan County. }

I, OWEN M. WHITE, Register for said County, do hereby certify that I received and re-registered the foregoing Mortgage or Deed of Trust, and the certificates thereto attached on the 12th day of May, 1871, at 7 o'clock A. M., and the same is entered in Note Book No. 2, page
152 75, and re-registered in Book Volume 23, commencing on page 99.

Given under my hand, at office at Blountville, 12th day of May, 1871.

O. M. WHITE, *Register.*

The foregoing Deed of Trust or Mortgage came to hand on the 12th day of May, 1871, at 3 o'clock

P. M., and was duly re-registered in Book "R," 153
page 19, in the Register's Office of Carter County, Tennessee.

A. L. HILTON, *Register.*

By WM. R. FITZSIMMONS, D. R.

STATE OF TENNESSEE,
Greene County.

Register's Office, May 13, 1871, 10 o'clock, A. M. 154
Then was the foregoing Mortgage or Deed of Trust received for registration and duly re-registered in Book No. 38, commencing on page 1, and noted in Book No. 3, page 20.

Given under my hand, at office in Greenville, Tennessee, this 13th day of May, 1871.

THOS. LANE, *R. G. C.*

155

STATE OF TENNESSEE,
Washington County.

Register's Office, May 13, 1871, 6 o'clock, P. M. Then was the foregoing Instrument or Mortgage received for registration and re-registered in Vol. 42, page 537 and following pages, and entered in Note Book "C," page 28.

Given under my hand, at office at Jonesboro, this day.

156

J. W. C. DEAKE, *Deputy County Register.*

STATE OF TENNESSEE,
Hamblen County.

I, L. B. SMITH, Register of the County aforesaid, do hereby certify that the foregoing Instrument or

157 Mortgage was received in my office for registration, at 10 hr. 30 min., A. M., May 15, 1871, and duly registered in Deed Book No. 1, page 86.

L. B. SMITH, *Register.*

STATE OF TENNESSEE,
Hawkins County.

Register's Office, May 16, 1871, at 8 o'clock, A. M. Then this Deed of Trust, with the Clerk's
158 Certificate, was received and re-registered in Book "B," commencing on page 512, etc.

JOHN WALKER,
Register for Hawkins County.

ROGERSVILLE, May 16, 1871.

STATE OF TENNESSEE,
McMinn County.

159 12:10 P. M., May 18, 1871. Then was the foregoing Mortgage Deed received and noted in Note Book "B," and registered in my office in Book "P," pages 507, etc.

WM. C. DAVIS, *Register.*

STATE OF TENNESSEE,
Hamilton County.

Register's Office, the 18th day of May, 1871, at 8
160 o'clock, P. M. Then was the foregoing Instrument and Certificates received for registration, and is now of record in Book "U," pages 400 and following.

Witness my hand, at office in Chattanooga, the day and date last above written.

JOHN F. HAMILL, *Register.*

Per J. E. DEARING, D. R.

STATE OF TENNESSEE, }
James County. } 161

Register's Office, the 19th day of May, 1871, at 5:20 o'clock, A. M. Then was the foregoing Instrument of Mortgage and the Certificates of Probate received for registration, and is now of record in Book No. 1, commencing on page 5 and following.

Witness my hand, at office at Ooltewah, Tenn., the day and date last above written. 162

JOHN G. RUSTON, *Register.*

STATE OF GEORGIA, }
Whitfield County. }

Clerk's Office, Superior Court, Whitfield county, May 19th, 1871, 10 o'clock, A. M. This was the foregoing Instrument of Mortgage and the Certificates of Probate received for registration, and is now of record on page 1 in Book "G" of this office, and re-registered for supposed insufficiency of 163 probate, on page 153 in Book "G," and following.

Witness my hand, at office this day and date above written.

H. C. HAMILTON, *Clerk D. C. W. C.*

STATE OF TENNESSEE, }
Loudon County. }

The foregoing Mortgage Deed, together with the Certificates of Probate thereto, are duly noted in 164 the Register's office for Loudon county, in Note Book "A," page 11, at 7 o'clock, P. M., May 19th, 1871, and registered in Record Book "A," commencing on page 72 and following, same day.

Given at office, in Loudon, this May 19th, 1871.

FRANCIS BEALS, *Register for Loudon Co.*

165 STATE OF TENNESSEE, }
Roane County. }

Register's Office, May 20th, 1871, 8 o'clock, A. M. Then was the foregoing Instrument of Mortgage received for registration, and noted in Note Book "A," page 107, and with the Certificates of Probate thereon registered in my office in Book "R," commencing on page 255.

Given under my hand, at office at Kingston, date last above written.

166 J. C. CLARK, *Register for Roane Co.*

STATE OF TENNESSEE, }
Jefferson County. }

Register's office, May 24, 1871. Then was the within Mortgage and Clerk's Certificate of Probate recorded in Deed Trust Book No. 1, on page 193, which came to hand May 24, 1871, at 4 o'clock, P. M.

167 Given under my hand, at office in Dandridge, the day and date above written.

W. M. HILL, *Register for Jefferson Co.*

STATE OF TENNESSEE, }
Granger County. }

Register's office, May 25, 1871. Then was the within Instrument and Certificate of Probate recorded in Note Book "A," page 146, at 7 o'clock, P.
168 M., and registered in Trust Book No. 1, commencing on page 76.

Given under my hand, at office in Rutledge, the 25th day of May, 1871.

HENRY SHEPERD, *Register of Granger Co.*

STATE OF TENNESSEE, }
Knox County. } 169

I, CHARLES MORROW, Register of Knox county, do hereby certify that the foregoing Mortgage was received at my office, at 8 o'clock, A. M., May 27, 1871, and registered in Mortgage Book "A," commencing on page 508.

Witness my hand, at office in Knoxville, this 27th May, 1871.

CHARLES MORROW, *Register for Knox Co.* 170

STATE OF TENNESSEE, }
Monroe County. }

I, E. D. MALONE, Register of Monroe county, do hereby certify that the foregoing Mortgage was received at my office, at 7 o'clock, P. M., May 29, 1871, and registered in Book "A," for Trust Deeds, commencing on page 190.

Witness my hand, at office in Madisonville, day and date last above written. 171

E. D. MALONE, *Register.*

STATE OF TENNESSEE, }
Bradley County. }

I certify that the foregoing Mortgage was received this day at 6 o'clock, P. M., and noted in Book "A," page 64, and with the Clerk's Certificate, is duly noted for registration in my office, in Book "B," pages 139–40, etc. 172

JOSEPH W. HICKS, *County Register.*

May 30, 1871.

173 RESPONDENT'S EXHIBIT No. 2.
W. H. D. L.. Sp'l Ex'r.

KNOXVILLE & OHIO RAILROAD.

Copy of Mortgage or Deed of Trust.

This indenture made on this, the first day of January, 1876, between the Knoxville & Ohio Railroad
174 Company, a corporation created, organized and operated under and in pursuance of the laws of the State of Tennessee, and herein designated party of the first part, and R. T. Wilson, of New York City, in the State of New York, and W. T. Walters, of the city of Baltimore, in the State of Maryland, and herein designated parties of the second part, witnesseth, that, whereas, at a general meeting of the stockholders of said Knoxville & Ohio Railroad Company, duly and regularly convened on the 24th
175 day of September, 1875, and by several adjournments continued till the 11th of November, ensuing, it was resolved that the directors shall forthwith prepare and cause to be issued, coupon bonds bearing seven per cent. (7%) interest payable semi-annnually, and payable to bearer, to the amount of ($500,000) five hundred thousand dollars, and secure the same by mortgage or deed of trust upon all the property and franchises of the company, with such conditions and provisions as the Board of Directors
176 shall deem proper and judicious; and whereas said board of directors, in the execution of the duty enjoined upon it by said resolution, have issued one thousand bonds for ($500), five hundred dollars each, bearing even date with these presents and falling due thirty years after date, with coupons attached; bearing interest at seven per cent (7%) per annum, payable semi-annually, on the first days of

January and July, in each and every year, in the 177
city of New York, subject to be called in and paid at any time at the option of the party of the first part, after thirty days notice to be given, as stipulated in said bonds, to be put upon the market and sold in the manner and for the purposes expressed in said resolution, the payment whereof the party of the first part is desirous of securing; and which said one thousand bonds, bearing date as aforesaid, are of like tenor and in the form following, to-wit:

178

No. $500.00.

UNITED STATES OF AMERICA.

THE KNOXVILLE & OHIO RAILROAD COMPANY.

First Mortgage Bond.

The Knoxville & Ohio Railroad Company, for value received, promises to pay the bearer hereof, on the 1st day of January, one thousand nine hundred and six, five hundred dollars, lawful money 179
of the United States, in the city of New York, with interest thereon in the meantime at the rate of seven per cent. per annum, payable in like lawful money, in the city of New York, semi-annually, on the first days of January and July of each year, on presentation and surrender of the annexed interest warrants. This bond is one of a series numbered from one to one thousand inclusive, for five hundred dollars each, amounting in the aggregate to five hundred thousand dollars, issued of this date, and 180
which are secured by a Deed of Trust or Mortgage bearing even date herewith, conveying in trust unto William T. Walters, of Baltimore, Maryland, and Richard T. Wilson, of the city and State of New York, all the property and franchise of said Knoxville & Ohio Railroad Company; and upon default in the interest payments hereon, this bond becomes

181 due and payable, as defined in said mortgage, or Deed of Trust. It is understood and agreed by the holder of this bond that the said Knoxville & Ohio Railroad Company, has the privilege of paying the same and accrued interest at any time before maturity, by giving notice of their wish to do so for thirty days in one newspaper each in New York City, and Knoxville, Tennessee, and that interest on this bond will cease at the end of said thirty days' notice.

182 In witness whereof the said Company has hereunto affixed its corporate seal and caused this bond to be signed by its President and Treasurer, this first day of January, 1876.

President.

Treasurer.

183 And the coupons annexed to which bonds are in the following form :

$17.50. $17.50.

The Knoxville & Ohio Railroad Company, will pay to the bearer in the City of New York, seventeen $\frac{50}{100}$ dollars in lawful money of the United States, on the first day of for semi-annual interest on bond No.

184 *Treasurer.*

Which coupons are to be issued with the lithographed signature of the Treasurer of said Company, and, when thus issued by said company, are to be as binding upon it as if such signature were written by the Treasurer.

Form of Trustees' Certificate. 185

We hereby certify that this is one of the bonds issued under the deed of trust or mortgage therein referred to.

Trustees.

Now, therefore, this indenture witnesseth that, for the purpose of securing and making certain the payment of the sums of money mentioned and provided for in the said one thousand bonds, and each 186
and every one of them, with the interest accruing thereon, after the same shall be sold according to the true intent and meaning thereof, and in consideration of the recited premises, the purchase money to be paid therefor, and the sum of one dollar to the said first party in hand paid by the parties of the second part at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged by the said party of the first part, the said Knoxville and Ohio Railroad Company, the party of 187
the first part aforesaid, hath granted, bargained, sold, assigned, transferred and conveyed, and by these presents doth grant, bargain, sell, assign, transfer and convey unto the said R. T. Wilson and W. T. Walters, the aforesaid parties of the second part, as joint tenants and not as tenants in common, and the survivor of them, their heirs and assigns forever, and to their successor or successors, all and singular the estate and property, real, personal and mixed, and [all privileges, rights, franchises, easements, 188
rights under leases, terms and parts of terms, agreements, covenants and contracts, of all and every kind, held and owned or occupied by the said party of the first part, including all and singular the railroads and railways of said Company, from and including the terminus and depot at Knoxville, in the County of Knox and State of Tennessee, and thence

to Careyville, in Campbell County in said State, together with all and singular the lands, tracts, lines, rails, bridges, ways, rights-of-way and materials, buildings, piers, wharves, erections, fences, walls, fixtures, privileges, franchises, rights and interests, real estate, personal property, choses in action, leasehold and other things of and belonging to said party of the first part of every kind, nature and character; and all the tolls, income, issues and profits to be had or divided from the same or any part or portion thereof, or from any part or portion of said term or terms, or either thereof; and all right to receive or recover the same; and all railway stations or depots with all the appurtenances necessary or convenient for the sole, complete, and entire use and operation as well as maintenance of said road; and also all the locomotives, engines, tenders, cars, carriages, tools and machinery belonging or appertaining to said railroad or railway; and also all improvements or additions made or to be made to any or all of said properties, estates, railroads or railways and their appurtenances by said party of the first part or by others, and all and every estate, interest, property or thing as well real or mixed as personal, which the said party of the first part own and hold, or may and shall hereafter acquire and hold, necessary or convenient for the use, occupation, operation or enjoyment of all or any of its said railroads, railways, leases and property, rights, privileges and franchises or any part or portion thereof; and also all rights and privileges to use the said road-beds, sidings, tracks, turnouts and switches constructed at the execution of these presents, or which may or shall be hereafter constructed for the convenient use of said railroads or railways or any of them, owned or operated by said first party, as fully and effectually as the said company, party of the first

part, is or may be by law entitled to acquire or have. 193
But nothing shall herein be held, understood or construed to prevent said party of the first part from selling, hypothecating or otherwise disposing of any money or securities received in payment of shares of capital stock, or from proceeds of any debts or claims now due to said company, or from disposing of by and with the consent in writing of the parties of the second part, or successors in the trust, any land or other property and effects not essential or necessary to be retained for the said road-way, depots or station 194
grounds nor required for the construction or convenient use of the said railways, nor from selling shares, nor from collecting moneys due on capital stock subscriptions or otherwise, or for other things, provided the said first party shall diligently proceed to apply all such means and proceeds to improving and equipping said railway and other like purposes thereof, and provided also that no default shall have been made and at the time remain in the payment of the interest or principal on any of 195
the bonds hereby secured. But even after default in payment of interest the trustees shall have full power in their discretion, upon the written request of the party of the first part, to convey by way of release or otherwise to the persons designated by the said party of the first part, any lands acquired or held for the purposes of stations, depots, shops or other buildings and no longer required therefor, and shall also have power to convey as aforesaid on like request any bonds or property, which, in the judg- 196
ment of the trustees shall not be necessary for use in connection with said railroad or which may have been held for a supply of fuel, gravel or other material, and also to convey as aforesaid on like request any lands not occupied by the then existing track which may become disused by reason of a change of the location of any station house, de-

pot, shop, or other building connected with the said railroad or any straightening or alteration of the lines of the road, and such land occupied by the track and adjacent to such station-house, depot, shop, or other buildings as the said party of the first part may deem it expedient to disuse or abandon by reason of such change, and consent to any such change and to such other changes in the location of the track, or depot, or other buildings, as shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect; provided that any lands that may be acquired for permanent use in substitution for any so released shall be conveyed to the trustees upon the trusts of these presents. And the trustees shall also have full power to allow the said party of the first part from time to time to dispose of such portions of the equipments, machinery and improvements at any time held or acquired for the use of said railroad as may have become unfit for such use. To have and to hold the estate, property, rights, privileges, franchises and interests above conveyed or transferred, or intended so to be; together with all and singular the emoluments, income and advantages, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, the said R. T. Wilson and W. T. Walters, parties of the second part, or the survivor of them, and their successors and assigns, on the trust and for the uses and purposes herein declared, and none other; provided always, that these presents are made and executed upon the express condition that if the said party of the first part shall well and truly pay or cause to be paid to the holders of the said bonds or obligations intended to be secured hereby, and each and every of them, after the same

shall be issued, the principal sums of money therein 201
respectively mentioned, at the maturity thereof, according to their true intent and meaning, with the interest thereon accruing, at the times and in the way and manner therein, and in the coupons provided, according to the true intent and meaning of these presents, that then and thenceforth this indenture and the estate hereby granted shall cease, determine, and be utterly void and of none effect, without any other release or formal reconveyance, re-entry, acknowledgment of satisfaction, or any 202
other act whatsoever.

In case default shall be made in the payment of any half year's interest on any of the bonds aforesaid at the time and in the manner in the coupons issued therewith is provided, the said coupon having been presented and the payment of the interest therein specified having been demanded, and that such default shall continue for the period of six months after the said coupon shall have become due, then and thereupon the principal of all the 203
said bonds shall at the election of the trustees become due and payable, or a majority in interest of the holders of said bonds may by an instrument in writing under their hands and seals instruct the said trustees to declare the principal of said bonds to be due, or waive the right so to declare, on such terms and conditions as such majority in interest shall deem proper, or may annul or reverse the election of the trustees; provided that no action of the trustees or of the bondholders shall extend to 204
or be taken to affect any subsequent default or impair the rights resulting therefrom.

And the said party of the first part, in consideration of the premises, hereby covenants and agrees to and with the said R. T. Wilson and W. T. Walters, and the survivor of them, their successor and successors in the said trust, and assigns, that

the said first party will at any time or times hereafter, upon the reasonable request of the said parties of the second part, their successors or assigns, execute and deliver, or cause to be executed and delivered, all and every such further and other reasonable deeds, conveyances, assignments and assurances in the law for the better and more effectual vesting and confirming the premises, property, rights and interests hereby granted or intended so to be, and especially for conveying any property subsequently to the date hereof, acquired by the said party of the first part and comprehended in the description contained in this indenture, if any such there be, to the said parties of the second part as Trustees for the uses and purposes of this indenture, and to their successors and assigns, as by them or their counsel learned in the law shall be reasonably devised, advised or required.

And first, that the said first party will do and perform all the things on the part of the said first party to be done and performed as hereinbefore set forth, and faithfully apply all the money and other things arising from the issue and sale of said bonds to the purposes hereinbefore recited or mentioned as the objects thereof, and further, that the said first party will pay unto the holder or holders of the said bonds respectively the said principal sums of money therein respectively mentioned and as expressed therein, and the interest thereon as the same shall become due and payable. And it is hereby provided, declared and agreed that no bond shall be deemed to be issued under this mortgage or entitled to the benefit of the security thereby provided unless there shall be endorsed thereon a certificate signed by the Trustees for the time being to the effect that the same is issued under the said mortgage.

And it is hereby further covenanted, de- 209
clared and agreed that in case of default in payment thereof, either principal or interest money secured hereby, and the continuance of such default for six months after such default shall have been made or suffered, the said first party shall and will, on demand made after the expiration of such six months by the parties of the second part, their successors or assigns, trustee or trustees for the time being, or their agent or agents duly authorized in writing, assign and transfer in due form to them, 210
or to their agent or agents so authorized, the actual possession of all the herein-granted and conveyed property and premises, and herein recited and mentioned, or intended to be embraced in this trust; and further, that the expense of taking, holding and managing said property and premises, if possession be taken, shall be paid from the income, and, if necessary, from the sale of the property and premises by the said trustee or trustees, as the case may be, for the time being; and further, that in 211
such case the parties of the second part, or the survivor of them, or their successors in said trusts and assigns, shall and may by themselves, or by their officers and agents, take and receive, collect and have, the income and profits of the said railways and other property, first applying the same to the payment and discharge of all current and necessary operating expenses and repairs, including the expenses hereinbefore mentioned, and all taxes and other similar charges, and next to the 212
payment of all sums of money due and payable upon the aforesaid bonds issued by said first party and hereby secured according to the tenor thereof; and further that the said parties of the second part, their successors in said trust or assigns, having entered as hereinbefore mentioned, into the full possession of the premises, property and estate hereby

conveyed or without having entered into such possession (the said default still continuing), at his or their discretion and with the approbation of such Court or Courts of Record, either State or Federal, as may have jurisdiction over like trusts in the State of Tennessee, may, or on the written request of the holders of at least one half of the bonds hereby secured and then outstanding unpaid shall, proceed to sell and dispose of or cause to be sold and disposed of, all the premises, property, rights, interests, franchises and estate, hereby conveyed or intended to be conveyed, or so much thereof as shall be necessary to pay and discharge the principal and interest according to the tenor thereof, of all such of said bonds hereby secured and then outstanding as may have been issued by said first party together with all benefit and equity of redemption of said party of the first part therein, by public auction, either in the City of Knoxville, Tennessee, or in City of New York, to the highest bidder, having previously given public notice of the time, place and terms of said sale, and of the property to be sold, by publishing the same in at least two newspapers of good general circulation in each of the said cities, and wherever else the Trustees may deem expedient or required by law, for a period of ninety days previous to such sale. And, as the attorney or attorneys of the said first party for that purpose by these presents duly constituted and appointed, make, execute and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, granting and assuring to the said purchaser or purchasers all such estate, right, property, franchise and interest, and to the same extent as the said first party had therein at the date hereof or at any time subsequent, and also a good and sufficient transfer and assignment of said personal property, choses in action,

contracts and leases. And out of the moneys 217
arising from such sale or sales it shall be lawful for
and the duty of said Trustees, after first retaining
the costs and charges of advertisement and of the
said sale of the premises and all other sums of
money which said Trustees or their successors in
said trust may have been obliged to pay by reason
of their taking possession of and operating said
premises, and a reasonable allowance for their own
services and for legal professional advice, aid and
assistance in effecting and consummating said pos- 218
session, operation and sale. And also to pay, in so far
as such proceeds shall suffice therefor, the principal
and interest whether then due or yet to become due,
which shall then remain unpaid on said bonds re-
maining issued and outstanding and hereby secured
as aforesaid, for the benefit of and to be paid to the
holders thereof and then restore the residue of the
said proceeds, if any there be, to the said party of
the first part; it being hereby expressly understood
that the bonds issued by the said first party and se- 219
cured by these presents shall be rateably receivable,
if desired by the holders thereof, in payment of
said sale by said trustees, or their successors, to the
amount of the net proceeds of such sale properly
applicable to the payment of such bonds respect-
ively; and the said sale when fully consumated,
shall be a perpetual bar, both in law and equity,
against the said party of the first part, and all per-
sons claiming or to claim the premises, or any part
thereof, by, through or under said party of the first 220
part subsequent to the date of these presents; and
in no case shall any claim or advantage be taken
of any valuation, appraisement or extension laws by
the party of the first part nor any injunction or stay
of lawful proceedings hereon, nor shall any process
be applied for or obtained by the party of the first
part to prevent or obstruct such lawful entry or

221 sale as aforesaid, but the same are hereby expressly waived by the said party of the first part.

And this indenture further witnesseth that these presents and the said bonds hereby secured or intended so to be, are made, extended and issued or delivered upon the terms, conditions and agreements following, that is to say:

First, that the actual possession, use, management and control of all the hereinbefore granted estate, property and premises shall be and remain
222 in and with the said party of the first part so long as the bonds so issued shall be and remain without forfeiture or default in respect of interest or otherwise.

Second, that in case of any vacancy in the said trusteeship hereunder, by the incapacity to act, death or resignation of either of the said trustees, or from any other cause, all his estate, right, interest, power and control shall be thereupon divested and cease and determine, but without destroying or
223 without any discontinuance of the trust, and the said party of the first part shall, or upon default or omission to take proceedings therefor for thirty days after notice of such vacancy or incapacity, the holders of not less than ten per centum in amount of the said bonds hereby secured, may apply to any of the Courts having jurisdiction in the premises in the State of Tennessee to appoint a new trustee to supply the vacancy, and such proceedings may be had and appointments made as often as the like
224 occasion may require the appointment of a trustee to execute the trust herein declared, and when so appointed such new trustee shall thereupon become vested, for the purposes of said trust, with all the rights, estate, interests, power, property and control hereby conveyed or granted to or vested in the said R. T. Wilson and W. T. Walters by these pre-

sents, without any further assurance, grant or con- 225
veyance of the same, as fully and effectually as if such appointment had been originally made therein. But, if the same shall be necessary, both the said party of the first part and such new trustee, or either of them, shall make, execute and deliver all necessary conveyances and agreements and grants and powers and authorities for that purpose.

And it is further understood and agreed by and between the parties to these presents, that the said parties of the second part, their successor or suc- 226
cessors in said trust, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts or negligence of any agent or agents necessarily employed by them, when such agent or agents are selected with proper discretion, or with the approbation of the said party of the first part, and the officers of the said railroad company shall have at all times the right to inspect the books kept by the Receivers of the road and their agents. 227

And this Indenture further witnesseth, that the said parties of the second part hereby accept the aforesaid trusts, and also covenant and agree to and with the said party of the first part to execute the same upon the terms and conditions hereinbefore as well as hereinafter mentioned and provided, and which said terms and conditions are hereby mutually agreed to and upon by both of the parties to these presents, and that the said Trustees and their successors may employ and advise with legal coun- 228
sel, and that the expense thereof, as well as other personal expenses of the said Trustees for the time being in the discharge of said trusts, and all other their reasonable and proper charges and expenses thereof, including their compensation, shall be paid by the parties of the first part as they are incurred, or otherwise, out of the trust estate or income on which or to which they are chargeable; and like-

229 wise that the said Trustees or their successors shall not be required to act in the execution of said trusts, except at their own option, unless the party requesting them so to do shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur or be at in so doing; and that when called upon to act they shall be and are hereby authorized and invested with full power at their option, under advice of legal counsel, to submit all questions of law or fact arising in the exe-
230 cution thereof to arbitrators; that they in the execution of said trusts may employ agents and attorneys in fact to act in their behalf whenever requested to act as aforesaid, except when they may be or are required by law to act personally.

And also that all covenants and agreements hereinbefore contained or implied may be executed specifically by and through any of the said Courts of competent jurisdiction as practised by them in like cases of trusts.

231 In testimony whereof the said party of the first part, in pursuance of authority given by law, and in comformity with the order of the Board of Directors has caused this indenture to be signed by C. M. McGhee, its President, and John L. Moses, Treasurer, and the Corporate seal of the Company to be affixed hereto, and the parties of the second part have hereunto subscribed their names and affixed their seals the day and year in this indenture first mentioned.

232 C. M. McGHEE, *President.*
JOHN L. MOSES, *Treasurer.*
R. T. WILSON, W. T. WALTERS } *Trustees.*

Signed, sealed and delivered in presence of
WILLIAM H. CLARKSON, } as to R. T. WILSON and W. T. WALTERS, *Trustees.*
H. W. LYNN, WM. BLAIR, } as to C. M. McGHEE and JOHN L. MOSES.

STATE OF NEW YORK, }
City and County of New York. } ss.:

Personally appeared before me, a Commissioner of the State of Tennessee in and for the State of New York, residing in the City of New York, the foregoing named trustees, Richard T. Wilson and W. T. Walters, with whom I am personally acquainted, who acknowledged that they executed the foregoing Instrument for the purposes therein contained.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 1st day of March, A. D. 1876.

[L. S.] WILLIAM H. CLARKSON,
Commissioner for Tennessee in New York,
117 Broadway, New York City.

STATE OF TENNESSEE, }
Knox County. }

Personally appeared before me, J. F. J. Lewis, Clerk of the County Court of said County, H. W. Lynn and Wm. Blair, subscribing witnesses to the foregoing instrument, who, having first been sworn, deposed and said they were acquainted with C. M. McGhee, President of the Knoxville & Ohio Railroad Company, who signed the foregoing deed, and that he acknowledged in their presence that the instrument was executed for the purposes therein named; also, at the same time, personally appeared before me, John L. Moses, Treasurer of the Knoxville & Ohio Railroad Company, known to me as the individual named in the foregoing deed, who acknowledged that he signed the same for the purposes therein named, that he affixed the seal of the Knoxville & Ohio Railroad Company, and that his signature as Treasurer, the signature of C. M. McGhee as President, and the seal of the Company were affixed under the authority and direction of an order passed by the Board of Directors of said Company, and that said order was passed in pursuance of a resolution adopted by the stockholders of the Company.

Witness, my hand and official seal, at office in Knoxville, this June 7, 1876.

J. F. J. LEWIS,
[L. S] *Clerk.*

STATE OF TENNESSEE, }
Knox County. }

REGISTER'S OFFICE,
June 7th, 1876, 12 *o'clock M.*

Then was this Deed of Trust registered in my office, in Trust Deed Book "C," vol 1st, pages 358, 359, 360, 361, 362, 363, 364, 365, 366 and 367, and noted in Note Book "A," page 22.

CHARLES MORROW,
Register,
For Knox County, Tennessee.

Fee, $7.25, paid.

STATE OF TENNESSEE, }
Anderson County. }

I, J. A. Brown, Register for said County, do certify that the Deed of Trust and the Certificate attached, was received for Record on the ninth day of June, A. D. 1876, at nine o'clock A. M., and Registered in Book Z, on pages 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, and noted in Note Book No. 2, on page 137.

J. A. BROWN,
Register,
For Anderson County, Tennessee,
By JOHN ALLEN,
Dept. Register,
For said County.

Fee, $7.50, paid.

STATE OF TENNESSEE, }
Campbell County. }

REGISTER'S OFFICE,
Jacksonboro, Tenn., June 14th, 1876.

The foregoing instrument with Certificates attached came to hand June 14th, 1876, at 9 o'clock A. M., was noted in Note Book, vol. "1," page 101, and recorded in Book of Trust Deeds, vol. "A," pages 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281 and 282, June 15th, 1876, at 3 o'clock P. M.

D. C. MCAMIS,
Register,
For Campbell County, Tennessee.

Reg. fees, $7.75, paid.

RESPONDENT'S EXHIBIT No. 3. 233

W. H. D. L., *Spl. Exr.*

Statement showing the Railroads which retired their debts to the State of Tennessee, and amount of same, date, &c.:

Names of Railroad.	Original Debt.	Date of payment	How Paid.		
			Bonds.	Coupons.	Cash.
East Tenn., Va & Ga.,	3,816,000 00	Aug. 1, 1870	3,835,000 00	282,750 00	11 10
Memphis & Charleston,	1,700,000 00	July 25, '77	1,648,000 00	88,920 00	
Nashville & Chattanooga	395,000 00	Jan. 1, '74	364,165 00		
Nashville & Decatur,	2,119,000 00	M'ch, 1871	2,393,750 00	407,005 00	32 10 234
Memphis & Ohio,	1,999,000 00	May 25, '71	2,146,000 00	322,380 00	
Mobile & Ohio,	1,296,000 00	Jan. 1, '72	1,539,000 00	246,245 00	1 00
Mississippi & Tennessee	398,000 00	Jan. 16, '78	299,000 00	810 00	
Mississippi Central,	1,124,000 00	Nov. 28, '77	1,199,000 00		

Statement showing amount of Sinking Fund paid by Railroads since January, 1870:

Name of Railroad.	Bonds.	Coupons.	Currency.	Total.	
Memphis & Charleston,	158,000 00	34,465	6 20	198,585 00	235
Nashville & Chattanooga,	20,500 00	10,835		31,335 00	
Mississippi & Tennessee,	115,000 00	2,536		117,536 00	

What Railroads were sold, the amount for which each was sold payable in bonds of the State, with *January*, 1871, *and subsequent coupons* attached (or equivalent) and the amount of bonds, &c., actually paid:

Name of Railroad.	Amount of Sale.	How Paid.			
		Bonds.	Coupons.	Cash.	
Edgefield and Kentucky,	900,000 00	974,000 00		10,443 96	236
Cin., Cumb. Gap & Charleston	300,000 00	300,000 00			
Knoxville & Kentucky,	350,000 00	343,000 00	7,500 00	20 67	
McMinnville & Manchester,	300,000 00	300,000 00			
Winchester & Alabama,	300,000 00	300,000 00			
Rogersville & Jefferson,	23,000 00	23,000 00			
Nashville & North-Western,	2,400,000 00	2,400,000 00			
Knoxville & Charleston,	105,000 00	117,000 00	7,950 00	6,791 25	
E. Tenn. & West. N. Carolina,	20,000 00	21,000 00	50 00	180 00	
Mem., Clarksville & Lou'ville,	1,700,000 00	1,630,000 00	70,000 00		
Tenn. & Pacific,	300,000 00	328,000 00		*10,470 00	

*In litigation.

237 Statement showing the date of first and last payments on account of the roads which were sold out:

Name of Railroad.	Date of first payment.	Date of last payment.
Edgefield & Kentucky, ...	Aug. 26, 1871.	Dec. 23, 1874.
Cin.,Cumb. Gap & Charleston	Oct. 16, 1871.	Sept. 24, 1874.
Tenn. & Pacific, ...	Aug. 8, 1874.	Nov. 29, 1876.
Nashville & North-Western,.	Oct. 10, 1871.	Jan. 1, 1874.
Winchester & Alabama,.....	Aug. 30, 1871.	Dec. 20, 1873.
McMinnville & Manchester,.	April 6, 1870.	July 27, 1870.
Knoxville & Kentucky,.....	Oct. 16, 1871.	Sept. 24, 1874.
238 Rogersville & Jefferson,.....	April 10, 1872.	April 10, 1872.
Knoxville & Charleston,....	April 20, 1872.	Dec. 1, 1878.
E. Tenn. & West. N. Carolina	Nov. 18, 1871.	Nov. 13, 1874.
Mem.,Clarksville & Louisville	March 2, 1871.	May 7, 1872.

RESUME.

Paid in Bonds,.....	13,423,915 00	
" " "	293,500 00	
" " "	6,736,000 00	
		20,453,415 00
" " Coupons	1,348,120 00	
" " "	47,836 00	
" " "	85,500 00	
239		1,481,456 00
" " Cash	44 20	
" " "	6 20	
" " "	27,905 88	
		27,956 28
		21,962,827 28
Debt paid,.....		14,772,079 20
Sinking Fund,.....		341,342 20
Roads sold,.....		6,849,405 88
Add, ...		21,962,827 28
Louisville & Nashville Railroad Co.,.....		702,000 00
240 Paid in 1865-6, ...		22,664,827 28

STATE OF TENNESSEE, }
Comptroller's Office. }

I, JAS. L. GAINES, Comptroller of the State of Tennessee, do certify that the foregoing statements (on the opposite page) are correct as shown by the books and records of this office.

Witness, etc., this 21st day of October, 1879.

[SEAL.] JAS. L. GAINES,
Comptr.

COMPAINANT'S EXHIBIT No. 1. 241
W. H. D. L., Sp'l Ex.

MOBILE & OHIO

RAILROAD COMPANY.

FIRST MORTGAGE

Seven per Cent. Sinking Fund 242

GOLD BONDS.

$1,000 or £205.

Principal Due, July 1st, 1901.

243

Interest Payable January 1st and July 1st.

Principal and Interest Payable in the City of New York, Coin of the United States of America, or in the City of London, in Sterling, at the Option of the Holder.

RESOLUTIONS 244

OF

Mobile and Ohio Railroad Company.

AT a called meeting of the Board of Directors of the Mobile and Ohio Railroad Company, held 25th

May, 1871, the following preamble and resolutions were unanimously adopted :

Whereas, At sundry times, heretofore, to enable this Corporation to iron, equip and complete its line of railway through the State of Tennessee, said State of Tennessee, under and by virtue of its general Internal Improvement Laws, and of other acts amendatory and supplementary thereto, theretofore passed, and then in full force, loaned to this Company, or has advanced for its benefit, bonds of the said State of Tennessee, to the aggregate sum of one million six hundred and eighty-four thousand eight hundred dollars ($1,684,800).

Whereof payment, both of principal and accruing interest, was to be made by this Company, as the same matured, and for the security of which payments of principal and interest, a lien was reserved to said State upon the entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the Company, as incident to, or necessary for its business; and all depots and depot stations, and all the property and assets attached thereto, or belonging to said Company, lying within the limits of said State, with power to seize, and in default of payment of the principal, to sell in the nature of a mortgage lien, as appears by reference to the said statutes of the State of Tennessee.

And whereas, By Act of the said State of Tennessee, Chapter XXXVIII, passed at the second session of the thirty-fifth General Assembly of the State, entitled, "An Act to liquidate the State Debt contracted in aid of railroad companies in the State of Tennessee," passed Febuary 25th, 1869, it is among other things enacted, that any person

or corporation may, with the consent of the Board of Directors of any railroad company, so having received aid under said General Internal Improvement Law, passed 11th Febuary, 1852, and the amendments thereto, pay off the indebtedness of such railroad company to the said State, in the mode and manner therein provided, and with the consent of such railroad company upon such payment be subrogated to all the lien or liens, which the State of Tennessee had, or has, upon said railroad, or its property, and have the same right to enforce the same, which the State of Tennessee had.

And whereas, This Corporation is desirous to avail itself of the provisions of said law, and return to said State of Tennessee the like amount of bonds of said State, as have heretofore been loaned to it, or advanced for its benefits by an issue of its own bonds, to be exchanged for said State bonds, with the holders thereof, and at the same time to secure to the holders of said substituted bonds in good faith all the protection and security which the said State of Tennessee held for its protection and indemnity against loss and damage, by reason of its said loan to the said Mobile and Ohio Railroad Company, by virtue of the laws of the said State, were no change made in the form of security originally held by said State, according to the true intent and meaning of the Act passed 25th February, 1869.

Therefore be it resolved by the Board of Directors of the Mobile and Ohio Railroad Company as follows:

1st.—The President of this Company is hereby authorized and empowered to cause to be prepared and issued, under the seal of this Company, bonds of this Company to the amount of one million six

253 hundred and eighty-five thousand dollars ($1,685,-
000), the same to be signed by the President, or in
his absence, by one of the Vice-Presidents, and
countersigned by the Secretary and Treasurer, said
bonds to be made payable in Gold coin of the Uni-
ted States, in the City of New York, or in the City
of London, at the option of the holder; to be each
for the sum of one thousand dollars, or two hun-
dred and five Pounds Sterling, and payable on the
1st day of July, A. D. 1901. Said bonds to bear
254 interest at seven per centum per annum, payable
semi-annually, on 1st January and July in each
year, at New York or London, at the option of the
holder, and for which interest, coupons or interest
warrants are to be attached to said bonds.

2d.—That Wm. Butler Duncan, Adrian Iselin
and Richard T. Wilson, their survivors and survi-
vor, are hereby declared the Agents of this Com-
pany, to effect the substitution of its said bonds, as
255 above authorized, in place of the said bonds of the
State of Tennessee, for the purpose and objects de-
clared in the preamble to these resolutions; and
upon and from and after such substitution, as rap-
idly as the same is effected, the said Wm. Butler
Duncan, Adrian Iselin, and Richard T. Wilson,
their survivors and survivor, and their successors,
are hereby declared to be Trustees for the mutual
benefit of this Company, and of the holders of said
bonds, and are hereby authorized to defend and
256 protect the rights conferred on the holders of said
bonds, by the said acts and laws of the said State of
Tennessee, and hereby acknowledged and recog-
nized. In case of the death or resignation of any of
said Trustees, the vacancy shall be filled by the
joint appointment of the remaining Trustees, or
Trustee, and the President of the Mobile and Ohio
Railroad Company, with the approval of its Board

of Directors; and if all become incapable of acting, 257
new Trustees are to be appointed by this Company.

3d.—This Company does hereby declare that it does and will at all times acknowledge and recognize the bonds herein authorized to be issued, when so substituted in the room and place of the said bonds of the State of Tennessee, in manner herein and by said act provided, as entitled to and in fact being a lien, in the nature of a first mortgage, upon all the property of this Company, in the said State, 258
the same precisely as is now declared to exist in favor of the said State of Tennessee, under and by virtue of the statutes thereof, in pursuance of which the said loan and advance of State bonds was made to the Company.

And this Company does hereby covenant to and with the said Trustees, their survivors and survivor, and successors, that it will in good faith do and perform all things, acts and deeds necessary and proper, and which it may be reasonably requested 259
to do, for the protection of the rights of the holders of said substituted bonds, and of said Trustees for their benefit, according to the true intent and meaning of the said acts and laws of the State of Tennessee, hereinbefore referred to, and of these resolutions; and further, that this Company shall and will, annually hereafter, from and after the 1st day of April, 1873, within three months thereafter, and during each year, while said bonds, herein authorized, are running to maturity, provide and set 260
apart from the earnings of the Company a fund of at least one per centum of the amount of said bonds, and will annually faithfully apply said sum of money, so set apart, as a sinking fund to the purchase and gradual retirement of said bonds; and on, or by the 1st day of April, 1874, and every year thereafter, till said bonds are fully retired, will

261 furnish to said Trustees, evidence of the performance of this stipulation, as may be agreed on.

Resolved, That the President of this Company be, and he is hereby directed, under its corporate seal, to execute and deliver to said Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, as Trustees aforesaid, its deed for the uses and purposes herein declared, and for the effectual protection and security of the holders of the bonds, hereby author-
662 ized to be issued, according to the true intent and meaning of these resolutions.

I certify the foregoing to be a true copy from the minutes of the Board of Directors of the Mobile and Ohio Railroad Company.

Seal of Company.

(Signed,) A. L. WILLOUGHBY,
Sec'y M. & O. R. R. Co.

263 DEED OF TRUST

OF

MOBILE AND OHIO RAILROAD CO.

This indenture, made this first day of July, A. D. 1871, between the Mobile and Ohio Railroad Company, of the first part, Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, of the City and State of New York, their survivors and survivor, and successors, of the second part, and the holders of the
264 bonds issued by said party of the first part, and herein described, of the third part.

Witnesseth, that whereas, under the General Internal Improvement Laws of the State of Tennessee, passed 11th February, 1852, and the acts amendatory thereto, the party of the first part has become liable to the State of Tennessee in the sum of one million

six hundred and eighty-four thousand eight hun- 265
dred dollars, being the amount of bonds of said State loaned to said party of the first part, and moreover is under obligation to pay to the State of Tennessee semi-annually an amount equal to the amount of the same annual interest upon the said bonds so loaned, as well as an amount of money equal to the principal of said bonds, so loaned to the party of the first part, when and as the same become due and payable; and whereas, by Act of the said State of Tennessee, entitled, "An Act to 266
liquidate the State debt contracted in aid of Railroad Companies in the State of Tennessee," passed February 25th, 1869, the Railroad Companies, so receiving aid from the State, of which the party of the first part was one, are authorized to issue their own bonds to an amount equal to the bonds so received from said State, and are authorized so to use said bonds as to retire and return to said State, bonds of said State of Tennessee to an amount equal to that loaned to said company, or advanced 267
for its benefit, for the security of which new issue of bonds, the holders thereof, it is by said act declared, shall, with the consent of such railroad company, be entitled to all the lien, rights and privileges reserved to the said State for its own security and protection.

And whereas, The party of the first part has accepted the terms and provisions of said Act, and has for the purpose aforesaid caused to be issued its bonds, dated 1st July, 1871, to the extent of one 268
million six hundred and eighty-five thousand dollars, and numbered from one to sixteen hundred and eighty-five (1685), inclusive, each for one thousand dollars, payable in gold coin of the United States, at New York, or two hundred and five pounds sterling, payable in London, at the option of the holder, with interest at seven per centum per

269 annum, payable semi-annually, in gold coin at New York, or in sterling at London, as aforesaid, at the option of the holder, for which interest coupons or warrants, payable as aforesaid, are attached to said bonds; and has delivered said bonds with the said coupons attached, to Wm. Butler Duncan, and Adrian Iselin and Richard T. Wilson, as agents of the party of the first part, to be substituted in place of the claim and demand and liability now held against the party of the first part by the said State of Ten-
270 nessee, for which purpose of substitution the said Wm. Butler Duncan, Adrian Iselin, and Richard T. Wilson, are hereby made and appointed the agents of the said party of the first part, and which substitution under said agency, said parties of the second part are proceeding to make and perfect.

And whereas, under the laws of the said State of Tennessee, the said State has a lien upon the following named property of this company, to-wit: The entire road in the State of Tennessee, including
271 the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business, and all depot stations, and all the property and assets attached thereto, or belonging to said company, within the State of Tennessee, which under the said Act of 1869 upon the return of said State bonds to the said State of Tennessee by any person or corporation, with the consent of such in-
272 debted railroad corporation, shall enure to the benefit and for the security of the person or corporation so paying off the said indebtedness or liability of such corporation to the State, or returning to it its said bonds.

Now then, know all men by these presents, that in consideration of the premises, and of the sum of five dollars to said party of the first part, paid by

the said parties of the second part, and to make 273
good and secure the rights of the holders of the said bonds herein described and now issued by the party of the first part, and who are in fact the payers of the said indebtedness of the said party of the first part to the State of Tennessee, within the meaning of said Act of February 25th, 1869, and to the extent thereby authorized, the said party of the first part doth hereby consent that the said parties of the second part shall pay and satisfy to the said State of Tennessee the debt and liability due by the 274
said party of the first part to the said State, and doth hereby approve such payment, and doth also hereby consent that upon the payment aforesaid being made, or to the extent that it shall be made, and as it is, or may be from time to time made, said parties of the second part shall, in pursuance of the terms and provisions of the Act last above herein referred to, be vested with, and shall have and hold all the lien or liens which the State of Tennessee had or has upon the property of the said party of the 275
first part hereinbefore described, in the State of Tennessee, and shall have the same right to enforce the same which the State of Tennessee had, and that said parties of the second part shall be, and are hereby placed in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same. To have and to hold the rights, powers and privileges hereby consented to, and which arise under the said Act of the State of 276
Tennessee with the consent and approval of the said Mobile and Ohio Railroad Company to them, the said parties of the second part, their survivors and survivor, and their successors, upon trust, however, for the use, benefit, advantage and security of the holders of the bonds, herein described, issued by the said Mobile and Ohio Railroad Company,

277 parties of the third part, to these presents and their assigns, and it is hereby declared, that in case of the death or resignation of the said parties of the second part, the said party of the first part shall appoint new Trustees in their place and stead ; and in case any one or two of said Trustees die or resign, such vacancy shall be filled by the joint appointments of the remaining Trustee, or Trustees, and the President of the Mobile and Ohio Railroad Company, with the approval of the Board of Direc-
278 tors thereof. And the said party of the first part doth agree and covenant to and with the said parties of the second part, their survivors and survivor, and their successors, that it, the said party of the first part, will in good faith and at all times hereafter do and perform all things necessary and proper for the protection and security of the said parties of the third part, and of the said parties of the second part, and their assigns, as the same may be reasonably required of it, to make good and ef-
279 fectual this lien and security of said parties, about the payment of their said debts and demands, and to secure the enforcement of their remedies for the payment of said bonds and the interest accruing thereon, in case default be made in the payment of said bonds and coupons, or any part or portion thereof, or default be made in the performance of the covenant herein contained, providing for the creation and application of a sinking fund for the gradual retirement of the bonds herein described,
280 according to true intent and meaning of these presents, and of the said acts hereinbefore referred to, of the General Assembly of the State of Tennessee. And the said party of the first part doth further covenant to and with the said parties of the second part, and of the third part hereto, and their assigns, that on the first day of April, 1873, and on the first day of April of each year thereafter, said party of the first part will from the net earnings of

said Road set aside an amount equal to one per centum of the amount of bonds issued and outstanding under the provisions thereof, as a Sinking Fund for the redemption of the bonds secured by these presents, and that it will invest said Sinking Fund, and the interest accruing thereon, in the purchase of the bonds herein secured, at a rate not exceeding Ten per centum above par, and accrued interest; the bonds so purchased shall be immediately registered, stamped and endorsed, as irrevocably belonging to said Sinking Fund, and not farther transferable, and said bonds and coupons so purchased and assigned to the Sinking Fund by such registration, stamping and endorsement, shall be ever void and cancelled for all other purposes. In case bonds hereby secured cannot be purchased at or under the rate above named, within three months after the setting apart of such money for account of said Sinking Fund, then such other good securities as may be agreed on by the parties of the first and second part shall be purchased and assigned to said Sinking Fund, and all such securities shall be placed with such Depository and in such manner as said parties of the first and second part may from time to time agree upon; and the interest accruing upon said Sinking Fund shall be collected by the party of the first part, and invested as herein provided; and all securities assigned to or purchased for said Sinking Fund shall be, and hereby are, irrevocably pledged for the security and ultimate redemption of the principal and interest of the bonds hereinbefore described and issued by the said party of the first part for the uses and purposes herein declared. And the said parties of the second part are hereby released from executing the bond required of Trustees under Section 1974 of the Code of Tennessee. And the said parties of the second part do hereby accept the Agency and Trusts herein and hereby imposed upon

281 282 283 284

285 them, and do promise and agree faithfully and to the best of their ability to perform the duties hereby provided to be done and performed by them.

It is understood that the acts of any two of the said Trustees hereunder shall be valid and effectual in the performance of the duties hereby declared, the same as if all had joined therein; that said Trustees may in all cases act by an agent duly appointed over their hand and seal, except in such matters as are by law required to be performed in
286 their proper person; that they shall be fully indemnified and repaid by the party of the first part, including a reasonable compensation, or out of the Trust Funds which may come into their hands, for their reasonable cash fees and expenses by them incurred about the performance of the acts and things herein and hereby required of them; and shall not be required to act in the execution of the trust herein declared, except at their own option, unless the party or parties requesting them so to
287 proceed shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur or be at in so doing.

In testimony whereof, the said party of the first part has hereto set its Corporate Seal and the hand of its President, by authority of a resolution of its Board of Directors duly given. And the said parties of the second part have hereunto set their
288 hands and seals.

{ SEAL OF COMPANY. }

(Signed) ABRAHAM MURDOCK,
Pres't Mobile & Ohio Railroad Co.
W. BUTLER DUNCAN, [L. S.]
ADRIAN ISELIN, [L. S.]
R. T. WILSON, [L. S.]

Attest:

A. L. WILLOUGHBY,
Sec'y & Treas'r M. & O. R. R. Co.

STATE OF NEW YORK, } ss.: 289
City and County of New York, }

On this seventh day of August, in the year of our Lord one thousand eight hundred and seventy-one, in the city of New York and State of New York, personally appeared before me, the undersigned, Geo. W. Colles, a Commissioner of Deeds for the State of Tennessee, resident in New York City, the within-named Abraham Murdock, President of the Mobile and Ohio Railroad Company, one of the within-named bargainers, with whom I am personally acquainted, and who, being first duly sworn, 290
deposes and says that he is President of the Mobile and Ohio Railroad Company, and is acquainted with its corporate seal; that the seal purporting to be such, above affixed, is such corporate seal, and was duly affixed to the within instrument by him, the said President; and also he, the said President, set his hand thereto, both by authority of a resolution of the Board of Directors of said Company, duly given. And also then and there personally appeared 291
William Butler Duncan, Adrian Iselin and Richard T. Wilson, others of the within-named bargainers, before me, with each of whom I am personally acquainted, and who each acknowledged that he had executed the within instrument for the purposes therein contained.

Witness my hand and seal, the day and
{ COMMISSIONER'S SEAL. } year first above written.
292

(Signed) GEORGE W. COLLES,
Commissioner for Tennessee in New York.

Deposition of W. H. Osborn.

CIRCUIT COURT OF THE UNITED STATES, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of internal improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY, 2

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

Testimony and proofs for final hearing on the part of the respondents, taken 3 before William H. De Lancey, Special Examiner, duly appointed herein, under and pursuant to the 67th Rule in Equity, as amended.

NEW YORK, February 13, 1880.

Parties met pursuant to notice.

Present.—Mr. W. Y. C. HUMES,

For Respondents. 4

MR. L. E. ANDREWS.

For Complainants.

WILLIAM H. OSBORN, a witness produced on the part of the respondents, being first duly cautioned

and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct examination by Mr. HUMES:

1 Q. What, if any, relation do you hold to any of the railroads of Tennessee, and if yea, how long have you held the same?

A. I was one of the Purchasing Committee that purchased the Mississippi Central Railroad, under a Decree of the Federal Courts in Tennessee and Mississippi.

2 Q. Do you know Peter Geddes; if so, how long have you known him?

A. Yes; I know him very well; have known him perhaps ten years.

3 Q. Did you ever have any conversation with him touching the Tennessee State Bonds, and the settlement of the purchasers of the Mississippi Central Railroad with the State; if yea, when did these conversations occur; and what did he say about such settlement?

A. We purchased nearly twelve hundred bonds, and when we had probably two-thirds in hand I told Mr. Geddes we had bought the bonds and intended to buy the whole amount for delivery to the State, at which he seemed gratified, from the fact that every bond paid off diminished the State debt to that extent.

4 Q. Did you borrow from Mr. Geddes any State bonds to make up the amount to deliver to the State?

A. No; I did not borrow any from him.

5 Q. Did you apply to him to lend you bonds; if yea, what did he say when you made this application?

A. Towards the close of our purchases of State 9
bonds, and, I believe, when the State officer was here, we decided not to use past due coupons, of which there were fifty or sixty thousand dollars in excess upon the bonds, but to buy from forty to sixty bonds, so as to pay bond for bond. There were no bonds offering in the market for a day or two, and I asked Mr. Geddes if he would lend me some bonds. Mr. Geddes said, to the best of my recollection, that if the Tennessee bonds were his personally he would do so with pleasure, but that 10
his block of bonds were the property of George Smith, Esq., and that he would prefer not to break bulk in the block if I could get along without it, or words to this effect. I succeeded in purchasing the bonds a day or two afterwards from other parties.

6 Q. What demand, or urgency, if any, did the State authorities bring to bear upon the purchasing committee to induce them to this settlement?

A. We bought the road from Canton, Miss., to the Ohio River, knowing that the portion of the line 11
lying within the confines of the State of Tennessee was in possession of the State authorities. The State Receiver held on with a close grip; it was too good a thing to give up; at any rate persuasion would not do it. We all knew that we could not make any money out of the whole line unless we got that piece out of the hands of the State. They understood our trouble just as well as we did without feeling the pain, and intensified it by taking our engineers and train men off the train at the north 12
boundary of Tennessee, having run only twenty-seven miles, and then we had to have a new set waiting at the south line of Tennessee, where their men got off, thus firing at us at both ends. I had no time to call upon the honorable gentleman at Nashville, but as a railroad manager I knew that we were day by day ground between two millstones,

13 and they would not let up unless we paid the debt and got the State lien discharged. The necessity was so exigent that we borrowed the money for the purpose, and got the road relieved from the encumbrance, and free from every recorded lien north of the south line of Tennessee.

7 Q. Did you make use of the acts of 1869 and '70 to get an assignment of the State lien to support bonds of the company issued to obtain the necessary funds?

14 A. We paid in 1,199 bonds, and we issued 1,199 bonds, and each bond bears an endorsement, certified by the Controller, transferring the lien of the State to the bond, as follows:

"STATE OF TENNESSEE, COMPTROLLER'S OFFICE.

I certify that the Chicago, St. Louis and New Orleans Railroad Company has this day liquidated the indebtedness of the Mississippi Central Railroad Company to the State of Tennessee for State bonds,
15 issued pursuant to law under the statutes of said State, to establish internal improvements, and that this bond is substituted for the same amount of indebtedness of the said railroad company to the said State, and the holder of the said bond is hereby subrogated to and secured by the lien held by said State, and to all other rights and remedies reserved by the State in the statutes upon the railroad and property of said Mississippi Central Railroad Company. This bond is one of eleven hundred and
16 ninety-nine bonds, and is executed and issued by virtue of law, takes the place of a bond of the State of Tennessee, and is a first mortgage bond.

November 28th, 1877.

(Sd.) JAMES L. GAINES,
Comptroller of the State of Tennessee."

8 Q. When was the new company formed; and

when was the mortgage of the company to support the bond you have just explained executed? 17

A. The Chicago, St. Louis and New Orleans Railroad Company was formed on the 7th day of November, 1877, and the mortgage executed on the 8th November, 1877, and it was registered in each county on the line of the road as soon as practicable.

(Mortgage filed herewith and marked Respondent's Exhibit No. 1. W. H. De. L.' Sp'l Ex'r.) 18

(Receipt and certificate of the Governor and Secretary of State of Tennessee, also herewith filed, marked Respondents's Exhibit No 2. W. H. De. L., Sp'l Ex'r.)

9 Q. Did you sell those company substitution bonds in open market, on the faith of this assignment of the State lien and the mortgage just exhibited? 19

A. Yes; they sold at 10 to 15 per cent more than the market price of the other first mortgage bonds secured by the same mortgage in 1878.

Cross-examination by MR. ANDREWS:

10 x Q. How many of the Tennessee State Bonds delivered to the State, as you have certified, were of the numbers issued by the State to your railroad company?

A. I don't know, and never had any occasion to 20 inquire.

11 x Q. Please produce from your books the numbers of the bonds so delivered?

A. I will endeavor to do so upon the return of our Secretary, now absent.

12 x Q. Were you not aware that in a suit that was pending in reference to the Mobile & Ohio Rail-

21 road, the question was presented as to the lien of the Tennessee State Bonds upon the railroad to which they were issued?

A. I read the newspapers and may possibly have read this, like other daily news. If this question has any legal bearing upon the question at issue, I wish to state that I have found from experience that this layman knows very little of law questions.

13 x Q. Did you not learn anything in reference to the lien of the State bonds from Mr. Geddes?

22 A. My esteemed friend Mr. Geddes never began to moot the right of bondholders to crucify railroads until he and his brother bondholders were defeated in the Tennessee Legislature a year or two after we settled with the State.

14 x Q. Did you go into this substitution scheme without any legal advice; and if you had such advice was it in writing or oral?

A. The counsel of the Purchasing Committee was Hon. John A. Campbell, formerly Judge of the U.S.

23 Supreme Court; and the Hon. James Emott of New York. Steps of this character are seldom taken without the advice of counsel, and I suppose we had a great many consultations on that subject. I am not certain that we have any written opinion on this subject, confined expressly to this subject.

15 x Q. Was not an opinion of Judge Campbell furnished in writing upon this subject?

A. I have no doubt that I asked Judge Campbell, either in writing or verbally, if we could have

24 the substitution of the State of Tennessee; and that we were safe in paying out a large sum of money to secure this right; and that when he and Judge Emott prepared the papers and documents for my signature I executed them.

16 x Q. Did you not have these substitution bonds placed on the New York Stock Exchange after the commencement of these suits of Stevens *v.* the Chi-

cago, St. Louis & New Orleans Railroad Company, 25
and others now pending?

A. The application to the Stock Exchange bears date April the 21st, 1879; the Tennessee Lien Bonds were sold previously.

17 x Q. Did you ever hear of any legal opinion to the contrary of the views of Judge Campbell on this question?

A. I have heard legal opinions, but whether they were based upon actual business I did not know, and therefore I only attached importance to such 26
an opinion as was based upon actual business.

18 x Q. Did you not hear of the opinion of Charles O'Conor?

A. I have seen it.

19 x Q. What was the lowest price you paid for the Tennessee State Bonds purchased, as you have testified, and also the average price?

A. I don't remember, but may ascertain from the books; but I decline to furnish it, as the books referred to are those of the Illinois Central R. R. Co. 27

(Complainant's counsel requests witness to produce the same.)

(Witness declines, unless ordered by the Court to do so.)

Cross-examination suspended.

Re-direct:

20 Q. At what period or year did you sell the 28
Substitution Bonds of the Company?

A. We sold them at the close of 1877, and during 1878, except $100,000 sold in 1879; ten hundred and ninety-nine thousand were sold in 1877 and 1878, and $100,000 in 1879, in November.

21 Q. In answer to cross-question 13, do you not intend to say that Mr. Geddes did not begin to as-

29 sert in your hearing that a lien existed in favor of State Bonds on Railroads to which they were issued?

A. Yes; that was the time when he began to talk to me on that subject.

Re-cross:

22 x Q. To whom were the subrogated bonds sold in 1877 and 1878?

A. To five or six parties; I can get their names
30 from the books; to Mr. Sturges, Mr. Cutting, the Illinois Central Company, Sidney Webster, E. H. Harriman & Co., and others.

23 x Q. Are not the Mr. Sturges and Mr. Cutting you have referred to directors of the Illinois Central R. R. Co.?

A. Yes.

24 x Q. Does not the Illinois Central R. R. Co. own a majority of the stock of the Chicago, St. Louis & New Orleans R. R. Co.?

31 A. Yes.

25 x Q. You were also a purchaser of these bonds?

A. I hold some of these bonds which I purchased through brokers.

26 x Q. You have referred to the claims of the Tennessee State bondholders as not presenting any ground of right, or any obstacle to the carrying out the substitution scheme; please explain these words contained in the recital of the second mortgage of the Mississippi Central R. R, Co., and state what
32 notice you derive therefrom of the position of the State bonds of Tennessee: "And whereas, the State of Tennessee advanced to said company five hundred and seventy-four thousand dollars of its six per cent. bonds to aid in constructing that part of said company's road between the northern boundary of the State of Mississippi and the city of Jackson, in Madison County, Tennessee; which bonds consti-

tute a first lien on that part of said company's road 33
and equipments within the State of Tennessee." Are you not President of the Chicago, St. Louis & New Orleans Railroad Company; is not the Mississippi Central a part of the line of road owned by that company; are there not bonds outstanding under the mortgage from which the above extract was taken?

(Objected to, because the first sentence assumes that the witness has stated a fact 34
which he has not. Secondly, the question seeks from the witness his opinion as to the construction of an instrument not in proof, and is irrelevant and incompetent.)

A. I am President of the Chicago, St. Louis & New Orleans R. R. Co., of which the old Mississippi Central forms a part; and there are bonds outstanding of that mortgage. The extract read is in the mortgage. I have known of that mortgage 35
for five years; have examined it frequently, and have consulted at least six able lawyers on the subject of this second mortgage. No one of them ever understood it. Amongst other anomalies is the authority conferred upon the President to make the date of maturity of any one bond, by endorsement, at his pleasure, or the time or place of payment at his pleasure; and through that power, some of the bonds were made payable next day. I shall not at-
tempt to construe any part of this perplexing mort- 36
gage. As to the particular question you have asked, I have never studied the paragraph or had my attention called to it before.

The witness further says: That on examination I find that we borrowed the bonds of the Illinois Central Railroad, and paid them in substitution bonds at a later date.

37 27 x Q. Did you not ask Mr. Geddes to buy some of the substitution bonds?

A. I think it very probable that I did.

28 x Q. Did he not refuse to purchase them on the ground that the Tennessee State bonds were a lien on the road?

A. He refused to buy them. I believe his chief objection was that he had as many Southern securities as he wanted; he had got through with those States down there. He has indulged in a good deal
38 of conversation in relation to the lien of the State, but at which time he put forth his lien, or at which time he expressed his anxiety to get out of Southern securities, I can't tell.

29 x Q. Did not Mr Geddes tell you about the Mobile and Ohio case, and its involving the question of the lien of the State bonds on the railroads?

A. Yes; he has talked about the Mobile and Ohio case, and a great many other cases affecting the bond question.

39 30 x Q. Did you not show Mr. Geddes Judge Campbell's opinion?

A. I don't remember to have done so. If Mr. Geddes remembers my showing him any of Judge Campbell's letters, it is undoubtedly so.

31 x Q. Could the Tennessee section of your road pay this claim of the bondholders in case of their success?

A. If it was managed by the governor and other officers of Tennessee as it was before, it undoubted-
40 ly could. It was managed as local road; they charged arbitrary rates.

32 x Q. Do I understand you that there are no mortgages or encumbrances upon this Tennessee section other than this substitution mortgage?

A. The foreclosure proceedings wiped out the old mortgage of the old company, and I am informed there is no recorded mortgage in Tennessee.

Re-direct:

33 Q. What did you say of Mr. Douglas' opinion in reply to verbal interrogatories of complainant's counsel?

A. John M. Douglass was the general solicitor and president of the Illinois Central Company for many years. That company owned a large amount of the consolidated bonds in default. At the instance of the directors, Mr. Douglas went south, and examined the property and procured copies of all recorded papers, and upon his return enumerated, among other points to be attained by the purchase of the road, he could pay off the Tennessee bonds and discharge the debt, purchasing the Tennessee State bonds at a discount.

Re-cross:

34 x Q. Was not that advice that you should purchase the Tennessee State bonds that were liens on your road?

A. No, sir; Mr. Douglass was well assured we had the right to purchase any bonds of that State.

35 x Q. Has not Mr. Douglas lately, and since reading Charles O'Conor's opinion, stated that the Tennessee State bondholders had liens upon the railroads, and that in his judgment they would succeed in enforcing them in these suits?

A. I have not seen Mr. Douglas but once for several years; have had no communication with him on this subject, and never heard the effect of O'Conor's opinion on him.

Adjourned to further notice.

45 NEW YORK, February 18, 1880.

Cross-examination continued:

36 x Q. Have you not purchased the Chicago, St. Louis & New Orleans Tennessee lien bonds since the commencement of this suit?

A. I purchased one for a poor widow last month; I purchased another for another widow the month before; I bought 20 for myself a few months ago; I bought 10 as a guardian for a trust fund.

46 37 x Q. Did you not say to Mr. Peter Geddes that at any rate your Company was very fortunate to have so few of the numbers of the Tennessee Bonds issued to your road now outstanding?

A. Yes; Mr. Geddes' affliction and grief on his ownership of an immense number of Tennessee Bonds, which cost him about par years ago, made our burden light in comparison.

38 x Q. Are there any bonds outstanding of the consolidated mortgage of the Mississippi Central
47 Railroad Company, executed May 1, 1872; and how many were issued?

A. The mortgage was for $8,000,000, and $3,000,000 were issued; the mortgage was foreclosed, and the property is now held under that foreclosure.

39 x Q. Are you not an officer of the Chicago, St. Louis & New Orleans Railroad Company, which so holds the property?

A. Yes; the President.

40 x Q. Have you not read that mortgage and the
48 following clauses thereof: "Whereas the Mississippi Central Railroad Company has now outstanding bonds and obligations in the aggregate amounting to four millions and six hundred and twenty-nine thousand dollars, which constitute a lien upon the whole or some portions of its railroad and property, described as follows * * * :

One million two hundred and seventy-nine thous- 49
and dollars for bonds advanced to it by the State of Tennessee which the Company is bound to pay and which are a lien upon its property by virtue of an act of the Legislature of Tennessee, entitled "An act to establish a system of internal improvements in this State," passed the 11th day of February, A. D. 1852?

A. We did not execute that mortgage; the mortgage was executed by H. S. McComb, President of the Mississippi Central Railroad Company; we are 50
now entirely satisfied that the recitals in that mortgage were incorrectly made, and have instituted proceedings in the State of Mississippi, and also in this Second Circuit, calling upon H. S. McComb, among other things, to explain that recital; and particularly to show what was done with the large amount of Tennessee State Bonds which, according to the statutes, could only be applied to the construction of the road; when these suits terminate I hope to be able to answer your question. 51

41 x Q. Did not your Company obtain the opinion of William Tracy, Esq., of the New York bar, in reference to the validity of the consolidated mortgage, and did he not in that opinion refer to the act of the Tennessee Legislature, passed on February 3, 1871, as containing the following words: "That nothing herein contained shall be construed in any way to impair or diminish the priority of the State's lien upon the property which may be mortgaged, as herein provided for, and, expressly, bonds which 52
have been or hereafter may be given by the State, shall be and remain a first lien on all the property of every description of the railroad company to which such bonds may have been given?

A. Our company, the Chicago, St. Louis & New Orleans Railroad Company, did not ask Mr. Tracy's opinion; there was no reference to that mortgage

53 after the purchase of that property subject only to priorities.

42 x Q. Were not the proceedings for the consolidation of the constituent companies into the New Orleans, St. Louis & Chicago Railroad Company delivered to the Secretary of State of Tennessee on the 10th of July, 1874?

A. The records and books of the old company are in the possession of H. S. McComb; we are demanding the same in three different lawsuits; I have not
54 personal or official knowledge of the facts you ask for.

43 x Q. When did the Chicago, St. Louis & New Orleans Company borrow the Tennessee State Bonds from the Illinois Central Railroad Company?

A. Early in November, 1877.

Re-direct:

44 Q. What did you mean by saying that the State of Tennessee made you pay off the State lien?

55 A. We had to operate the road from Cairo to New Orleans as an entirety; we applied on the road beyond the confines of the State all the earnings and a large amount of money for the purpose of improving the road and making it safe for life and property. But the State authorities would not pursue this course, and took the surplus, beyond the payment of employes, into the State Treasury, keeping the road in a very wretched condition physically; therefore as railroad men we could not operate that bad piece
56 in the middle of it; the State of Tennessee practically had the power to make us pay the State, and they did so.

W. H. OSBORN.

Subscribed and sworn to before me, this 18th day of Feb., 1880.

WILLIAM H. DE LANCEY,
Special Examiner.

I, WILLIAM H. DE LANCEY, Special Examiner, 57
duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined, and the deposition was 58
reduced to writing and read to the witness, and by him subscribed in my presence, and that the Exhibits hereto annexed, marken "Respondent's Exhibit No. 1, W. H. D. L., Sp'l Ex'r," and "Respondent's Exhibit No. 2, W. H. D. L., Sp'l Ex'r," were introduced in evidence in said cause during the taking of said deposition.

Dated Feb. 18, 1880.

WILLIAM H. DeLANCEY.

59

60

61 RESPONDENTS' EXHIBIT, NO. 1.
W. H. D. L., Spl. Exr.

CHICAGO, ST. LOUIS & NEW ORLEANS R. R. CO.
FIRST MORTGAGE
FOR
$13,000,000.
TO

62 A. SCHREIBER,
JAMES FENTRESS,
LEWIS V. F. RANDOLPH } *Trustees.*

NOVEMBER 8TH, 1877.

THIS INDENTURE, made this 8th day of November, Anno Domini one thousand eight hundred and seventy-seven, between the Chicago, St. Louis and New Orleans Railroad Company, of the first part;
63 the New Orleans, Jackson and Northern Railroad Company, of the second part; the Central Missippi Railroad Company, of the third part, and Adolph Schreiber, of the City of New Orleans, in the State of Louisiana, James Fentress, of Bolivar, in the State of Tennessee, and Lewis V. F. Randolph, of the City of New York, in the State of New York, Trustees, of the fourth part:

Whereas, A certain corporation, known as the
64 New Orleans, Jackson and Great Northern Railroad Company, organized under the laws of the States of Louisiana and Mississippi, heretofore owned and operated a certain railroad, extending from the City of New Orleans, in the State of Louisiana, to Canton, in the State of Mississippi, together with a branch thereof known as the Kosciusko Branch, from a point at or near Durant, in the State of Mis-

sissippi, to Kosciusko, in the said State of Mississippi, and with the right to construct and operate certain other branches and extensions, with the depot grounds, buildings, machinery and other property to said railroad appertaining, being part of the railroad and property hereby intended to be mortgaged and conveyed; 65

And whereas, The said New Orleans, Jackson and Great Northern Railroad Company, on or about the twelfth day of June, 1856, motgaged and conveyed in trust to one James D. Denegre, its road aforesaid, made and to be made, from the City of New Orleans, in the State of Louisiana, to Canton, in the State of Mississippi, with the appurtenances, to secure the payment of certain of its corporate bonds to the extent of three million of dollars; 66

And whereas, Certain of such bonds were afterwards issued under said mortgage, two thousand nine hundred and forty-one, of which are now outstanding and unpaid, amounting to two millions nine hundred and forty-one thousand ($2,941,000) dollars; 67

And whereas, Subsequently to the making of said first mortgage, to wit: On the first day of October, 1860, the said New Orleans, Jackson and Great Northern Railroad Company, for the purpose of securing the payment of an additional and subsequent issue of its corporate bonds, to a further amount, not exceeding three millions of dollars, did also mortgage and convey in trust to the said James D. Denegre its line of road, made and to be made, from the City of New Orleans to Canton, in the State of Mississippi, and from Canton to Aberdeen, in said State of Mississippi, together with the appurtenances; 68

69 *And whereas*, Certain of such bonds were afterwards issued under said second mortgage, fifteen hundred of which are now outstanding and unpaid, amounting to one million five hundred thousand ($1,500,000) dollars;

And whereas, Afterwards the said New Orleans, Jackson and Great Northern Railroad Company failed to pay the coupons or interest warrants upon said first and second mortgages, and certain of the
70 said coupons, with all liens, rights and equities attaching thereto under said mortgages, were purchased by third parties, to the amount of three hundred and forty thousand ($340,000) dollars of such coupons, due and unpaid upon the said first mortgage, and of one hundred and sixty thousand ($160,000) dollars of such coupons, due and unpaid upon the said second mortgage, of said New Orleans, Jackson and Great Northern Railroad Company.

71 *And whereas*, The said New Orleans, Jackson and Northern Railroad Company, party hereto of the second part, on the fifteenth day of August, 1877, made an issue of its corporate bonds, known as Matured Coupon Bonds, to the extent of five hundred thousand dollars, to provide for the postponement of the payment of the said three hundred and forty thousand dollars ($340,000) coupons due and unpaid upon the first mortgage of the New Orleans, Jackson and Great Northern Railroad Company, and of
72 the said one hundred and sixty thousand dollars ($160,000) coupons due and unpaid upon the second mortgage of the said New Orleans, Jackson and Great Northern Railroad Company; and to further secure said matured coupon bonds, did also mortgage and convey in trust to William H. Gebbard and Lewis V. F. Randolph, both of the city of New York, its line of road, made and to be made,

from the city of New Orleans to Canton in the State 73
of Mississppi;

And whereas, all of such coupons are still unpaid, and said Matured Coupon Bonds are now outstanding, to said amount of five hundred thousand dollars;

And whereas, a certain corporation known and designated as the Mississppi Central Railroad Company was chartered and incorporated by the Legislature of the State of Mississippi, by an act passed 74
on the tenth day of March, 1852, for the purpose of building and operating a railroad from the town of Canton, heretofore mentioned, in said State of Mississippi, to the north line of said State, and said corporation proceeded in the construction of said railroad;

And whereas, afterwards, a certain other railroad corporation, known and designated as the Mississippi Central and Tenessee Railroad Company, was 75
chartered and incorporated by an act of the Legislature of the State of Tennessee, passed on the thirtieth day of November, 1853, and was authorized by said act to consolidate and form one corporation with the Mississippi Central Railroad Company, hereinbefore mentioned;

And whereas, the said State of Tennessee, under and by virtue of its Generai Internal Improvement Laws, and of other acts amendatory thereof and 76
supplementary thereto, thereto, theretofore passed and then in full force, loaned to the said Mississippi Central and Tennessee Railroad Company, or advanced for its benefit Bonds of the State of Tennessee to the aggregate amount of five hundred and seventy-four thousand ($374,000) dollars, by virtue of which Bonds and upon the issuance thereof

under and pursuant to the statutes authorizing such issuance of Bonds, the said State of Tennesssee became invested, without deed from the Railroad Company, with a lien in the nature of a mortgage upon the entire Road built or to be built by said corporation in the State of Tennessee, with all its equipments and appurtenances, prior to any mortgage made or to be made by the said corporation, as security to indemnify and save harmless the said State, on account of the issuance and for the payment of the principal and interest of its said Bonds so issued to said corporation ;

And whereas, afterwards and in pursuance of certain acts of the Legislatures of the States of Mississippi, Tennessee and Kentucky, the said Mississippi Central and Tennessee Railroad Company and the said Mississippi Central Railroad Company were consolidated and made into one corporation, under the name of the Mississippi Central Railroad Company, by the agreement and consent of the Stockholders thereof, and were authorized to continue and complete the construction of the Railroad from Canton in the State of Mississippi aforesaid, through the States of Tenessee and Kentucky, to a point on the Ohio River opposite to Cairo in Illinois, and to operate the same, and the said corporation, thereafter known as the Mississippi Central Railroad Company, did proceed to construct and to operate said Railroad ;

And whereas, under and by virtue of the acts aforesaid, and certain other acts of the Legislature of the State of Tennessee, certain other Bonds of said State to the amount of $550,000, were issued to the said Mississippi Central Railroad Company, for the purpose of aiding in the construction and completion of the said Road in the State of Tennessee, and previous to the construction and

completion thereof, and under and by virtue of the 81
General Internal Improvement Laws, and the acts amendatory thereof and supplementary thereto, pursuant to which said bonds were issued, a lien was reserved to the said State upon the entire road in the State of Tennessee—with all its superstructure, equipments and appurtenances, and all property owned by the Company, and all depots and stations, and assets attached thereto, lying within the limits of said State, in the nature of a mortgage lien, without deed, prior to the lien of any mort- 82
gage executed or to be executed by the said Company, to indemnify and save harmless the said State of Tennessee, for the issuance and against the payment of the principal and interest of the said last mentioned amount of five hundred and fifty thousand dollars of its Bonds, so as aforesaid issued to or for the benefit of the said Mississippi Central Railroad Company;

And whereas, said Mississippi Central Railroad Company having been made to pay and re-imburse 83
to the said State of Tennessee, a certain amount of the interest which had accrued, and which the State had paid upon its Bonds so as aforesaid issued to the Mississippi Central and Tennessee Railroad Company, certain acts were passed by the Legislature of the State of Tennessee, by which the balance due from the Mississippi Central Railroad Company for such interest, having been paid by the said State of Tennessee by issuing other of its Bonds, was charged as principal, and in all respects 84
the said State was entitled by virtue of the payment thereof, and the issuance of said Bonds therefor, to the same rights and liens for the same which were created by the acts authorizing the original issue of the Bonds to said Railroad Companies; which interest, so converted into principal, and for which the said State of Tennessee, became and is entitled to a

like first lien upon the Railroad and property of the Mississippi Central Railroad Company within said State, amounts to seventy-five thousand one hundred and eighty ($75,180) dollars.

And whereas, by virtue of the payments or advances aforesaid, the State of Tennessee and its assigns, as hereinafter mentioned, became entitled to, and does hold a first and paramount lien in the nature of a first mortgage upon all the property which was of the said Mississippi Central Railroad Company, so called after the consolidation aforesaid, within the said State of Tennessee, to the extent and amount of one million one hundred and ninety-nine thousand one hundred and eighty ($1,199,180) dollars besides interest ;

And whereas, by an Act of the Legislature of said State of Tennessee, passed on the twenty-fifth day of February, 1869, and by other acts amendatory thereof and supplementary thereto, it was enacted, among other things, that the respective Railroad Companies, or either of them that had created indebtedness to the said State, were authorized to repay any amount of the principal of such indebtedness in the Bonds of the State, and that any such Railroad Company repaying any such indebtedness, might issue Bonds to an equal amount with the Bonds of the State paid and delivered up as thereby provided, which said Bonds so issued in lieu of any equal amount of said State Bonds, should be certified by the Comptroller of said State, and should be and possess a lien *pro rata* in amount and of equal validity and effect with the State indebtedness upon such Railroad, and all its property within the State of Tennessee ; and farther, that any person or persons, with the consent and approbation of any Railroad Company which should be indebted to the State of Tennessee, and

upon whose property the State of Tennessee might 89
hold a lien, might pay the said State debt, so far as the State is concerned, in the Bonds of the State, or any coupons of Bonds at par, and the person or persons so paying the debt of such Railroad Company, with the consent of such Company, should be entitled to have and hold all the lien or liens which the State of Tennessee had or has, upon said Railroad or its property, and the same right and power to enforce the same which the State of Tennessee had ; 90

And whereas, in and by a Decree of the Circuit Court of the United States for the District of Tennessee, made and entered at Memphis, on the sixth day of January, 1877, in a suit in Chancery commenced by the Trustees of the consolidated mortgage of the Mississippi Central Railroad Company hereinafter mentioned, for the foreclosure of said mortgage, and for authority and direction to sell and convey the Railroad and franchises of the said Mississippi Central 91
Railroad Company, in satisfaction of said consolidated mortgage, it was by the said Court ordered, adjudged and decreed, that the said Trustees and their assigns are entitled, as representing the said Mississippi Central Railroad Company, to settle the claim and take and receive a transfer of the lien of the State of Tennessee ;

And whereas, the said Chicago, St. Louis and New Orleans Railroad Company has become the as- 92
signee and grantee of said Trustees in said decree named, and of all their rights and privileges in that behalf, and also the successor as hereinafter stated of said corporation known as the Mississippi Central Railroad Company, and of all its powers, rights, privileges and franchises, with the right in case of payment of said Tennessee Bonds to issue and sub-

stitute its own bonds with all the liens and rights held by the State of Tennessee ;

And whereas, the said party of the first part by virtue of the premises, is invested with the rights, powers, faculties and property of the Trustees aforesaid, under said deed of trust, and the decrees of the said Court above mentioned, and also possessed of the property described in said deed and decree subject to the mortgages and liens thereon, and by reason thereof is interested to settle with the State of Tennessee the debt created by the advance of its said Bonds in the manner authorized by said State; and, in order to maintain and continue the lien created by the acts aforesaid, and reserved and held by the State of Tennessee on said property within said State, so as to enable said Company to effect such settlement, the said Chicago, St. Louis and New Orleans Railroad Company, by Resolution of its Board of Directors, duly consented, and has filed such consent, executed under its corporate seal, in the office of the Treasurer of said State of Tennessee, that the said parties of the fourth part,—as Trustees for the Bonds to be issued in substitution for said Tennessee State Bonds, as hereinafter set forth, or the purchasers and holders of such bonds, —may make payment of such State Bonds to the State of Tennessee, according to said Statutes, and may receive agreeably to the same a transfer of the lien of said State, and so become invested as authorized by said acts, with the first lien upon all said Railroad and property in the State of Tennessee, theretofore held by said State as aforesaid, and have and hold all the liens of said State and all right and power to enforce the same, which the State of Tennessee has or had, so that the holders of said Bonds and the said Trustees in their behalf shall be placed in the same position in all respects and have all the

rights, and the same power to enforce the same, 97
which the State of Tennessee has or had before such transfer;

And whereas, the said Mississippi Central Railroad Company, for the purpose of improving and completing its Line of Railroad, on or about the first day of November, 1854, made and executed a mortgage or deed of trust to Charles Butler, Azariah C. Flagg and Jacob Thompson, to secure the payment of its corporate Bonds to an amount not to exceed 98
one million three hundred and fifty thousand ($1,-350,000) dollars, whereby it mortgaged and conveyed all its Railroad constructed, or to be constructed in the State of Mississippi, with its property and appurtenances;

And whereas, Bonds were issued under said Mortgage, and are now outstanding and unpaid to an amount not precisely and accurately known, but not exceeding nine hundred and ninety-two thou-
sand ($992,000) dollars; 99

And whereas, subsequently to the making and execution of said first mortgage, to wit, on the first day of November, 1865, the said Mississippi Central Railroad Company, made and executed a second mortgage or deed of trust to Jacob S. Rogers, M. P. Mathison and William L. Sharkey, for the purpose of securing the payment of an additional issue of its corporate Bonds, to an amount not to exceed two millions ($2,000,000) of 100
dollars;

And whereas, Bonds have been issued under said second mortgage, and are now outstanding to an amount which is not definitely accurately known and ascertained, but which does not exceed one million nine hundred and ninety-seven thousand ($1,999,000) dollars;

101 *And whereas*, afterwards, the said Mississippi Central Railroad Company failed to pay certain coupons for interest upon its second mortgage aforesaid, and certain of said coupons were purchased and are now held by third parties, and the holders of certain other of said coupons agreed to extend the time for payment thereof, for which agreement of extension and for the preservation of which rights, certain scrip was issued by said Mississippi Central Railroad Company, which said coupons
102 and scrip and other debts alleged to be liens upon so much of the railroad and property of said corporation as is covered by said second mortgage, amount in all to not more than one million two hundred and twenty-one thousand ($1,221,000) dollars, the precise total thereof not being accurately or definitely known;

And whereas, afterwards, the New Orleans, Jackson and Great Northern Railroad Company, herein-
102 before mentioned, made and executed a certain other mortgage or deed of trust, being a consolidated mortgage upon its entire railroad and property, under which certain bonds were issued; and the said Railroad Company having made default in payment of interest upon its said last mentioned bonds, and thereupon the principal thereof, by virtue of the terms and conditions thereof, and of the mortgage or deed of trust securing the same, having become absolutely and entiely due and payable,
104 such proceedings were had for the foreclosure of said mortgage, that the railroad property, rights and franchises of the said New Orleans. Jackson and Great Northern Railroad Company, were afterwards sold under and by virtue of the power in said mortgage or deed of trust contained, and of a decree in that behalf rendered by the Circuit Court of the United States for the District of Louisiana, and

purchased by and on behalf of certain holders of the 105
bonds of said Company, issued under said consolidated mortgage;

And whereas, afterwards, the said bondholders and purchasers, under and by virtue of statutes of the States of Mississippi and Louisiana, did organize and incorporate themselves by the corporate name and title of the New Orleans, Jackson and Northern Railroad Company, and received a deed and transfer of said Railroad, and became the 106
owners under and according to the statutes aforesaid, of all the rights, franchises, railroad, rights of way, superstructure and other property which had been of the New Orleans, Jackson and Great Northern Railroad Company, with all privileges and immunities appertaining to the property or franchises so sold and purchased, and all powers and franchises of said Company in as full and complete manner as the said New Orleans, Jackson and Great Northern Railroad Company was entitled to the 107
same by law, and as fully and perfectly as if the said New Orleans, Jackson and Northern Railroad Company had been granted a charter of incorporation in the very words of the act or acts under which the New Orleans, Jackson and Great Northern Railroad Company existed, owned and operated its said railroad, and held and exercised its rights, privileges and franchises;

And whereas, also, the said Mississippi Central 108
Railroad Company, hereinbefore mentioned, for the purpose of completing and extending its railroad to the Ohio River, made and executed a certain consolidated mortgage or deed of trust on or about the first day of May, one thousand eight hundred and seventy-two, under which consolidated mortgage or deed of trust, certain bonds or obligations

of the said Mississippi Central Railroad Company were issued :

And whereas, the said Mississippi Central Railroad Company afterwards failed and made default in the payment of its coupons for interest upon said consolidated mortgage bonds ; and thereafter, according to the provisions of said bonds, and of said mortgage or deed of trust securing the same, such proceedings were had that under and by virtue of the power created and conferred by the said mortgage or deed of trust, and in pursuance of decrees rendered in the Circuit Courts of the United States in the Districts of Tennessee, Mississippi and Kentucky, all the property described in said decrees, and in the deed of trust aforesaid, being the railroad of the said Mississippi Central Railroad Company, extending from Canton in the State of Mississippi, through the States of Mississippi, Tennessee and Kentucky, to a point on the Ohio River opposite Cairo, with all franchises, rights, and appurtenances thereto belonging, and all the franchises, rights and privileges of the said corportion were sold by the trustees in said mortgage or deed of trust mentioned, under the direction of a Master appointed by the Court, and purchased by certain holders of the bonds issued under the said mortgage ;

And whereas, afterwards the said bondholders and purchasers, under and in pursuance of acts of the Legislatures of the States of Mississippi, Tennessee and Kentucky, organized and became incorporated for the purpose of holding, owning and operating the said railroad under the name, title and designation of the Central Mississippi Railroad Company, and by virtue of the said acts of the Legislatures aforesaid, and of deeds and conveyances, became, and were invested with the absolute title to said railroad and property, real and personal, and the same right to operate the said railroad in the said

States as the Mississippi Central Railroad Company had, and with all rights, privileges and immunities appertaining to the property and franchises so sold and purchased, and granted and conveyed to them, as fully and completely as the said Mississippi Central Railroad Company was, or had been, and with all the rights, privileges, immunities and franchises held by the said Mississippi Central Railroad Company, by or under any acts of the Legislatures of the States aforesaid, as fully and perfectly as if the said Central Mississippi Railroad Company had been granted a charter of incorporation in the very words of the acts under which the Mississippi Central Railroad Company had existed, and claimed and exercised such powers and privileges ;

And whereas, for the better and more convenient operation of the said railroads, and the protection of the parties interested therein, and in the Bonds secured by said prior mortgages thereon, and in order to form one continuous line of railway from the City of New Orleans aforesaid, to the Ohio River opposite the terminus of the Illinois Central Railroad at Cairo, under a single control and ownership, it was determined and agreed to consolidate and unite the said two Railroad Companies known as the New Orleans, Jackson and Northern Railroad Company and the Central Mississippi Railroad Company, which had so as aforesaid become the owners of the said two railroads, together constituting such continuous line from the city of New Orleans to the Ohio River ;

And whereas, an agreement for such consolidation, dated the 7th day of November, A. D. 1877, has been duly executed by the said two corporations, and ratified and assented to by the stockholders thereof (and has become valid, final and effectual in all the States in which the same is authorized and per-

117 mitted by the statutes thereof, and is intended to be perfected, ratified and confirmed in all the States through which the said railroad passes) in order that the said two corporations may become merged and consolidated in the corporation known as the Chicago, St. Louis and New Orleans Railroad Company, the party hereto of the first part;

And whereas, by virtue of said agreement of consolidation, the corporation, party of the first part to
118 these presents, and known as the Chicago, St. Louis and New Orleans Railroad Company, a corporation formed by the union and consolidation of parties of the second and third parts hereto, is intended to own and operate the Railroad so as aforesaid extending from the City of New Orleans, to the Ohio river opposite Cairo, with all branches and extensions thereof, made or to be made, and with all the appurtenance, franchises and rights of way appertaining thereto, which were of the said two corporations so consolidating, or which heretofore belonged
119 to the corporations hereinbefore mentioned, known as the New Orleans, Jackson and Great Northern Railroad and the Mississippi Central Railroad Companies:

And whereas, the said Chicago, St. Louis and New Orleans Railroad Company, and the parties interested in the said line of Railroad, have been advised and have determined that it is expedient and desirable to consolidate and pro-
120 vide for the existing liens upon the said line of road, or the several portions thereof hereinbefore recited, and to provide in addition the means for continuing and completing, and further equipping and perfecting such line of railroad between New Orleans and the Ohio River as aforesaid, and for that purpose the Directors of said Chicago, St. Louis and New Orleans Railroad Company, at a

meeting held on the eighth day of November, one 121
thousand eight hundred and seventy-seven, did pass certain resolutions of the tenor and effect following:

Resolved, That the President and Treasurer of this Company be authorized to execute from time to time, as shall be required to effectuate the purposes of these Resolutions, thirteen thousand Bonds of this Company, to be numbered consecutively from number one to number thirteen thousand inclusive, 122
each Bond to be for one thousand dollars, payable on the first day of November, one thousand eight hundred and ninety-seven, bearing interest at the rate of seven per cent. per annum, payable semi-annally at the office of the Company in the City of New York, and the interest and principal payable in lawful money of the United States of America; that the President be authorized and instructed to secure the payment of said Bonds and interest thereon by a deed of mortgage, and for that purpose to exe-
cute and affix the seal of this Corporation, and his 123
signature as President, to a mortgage or deed of trust of the Railroad and franchises of this Company, including all its personal and real estate, and all its property movable and immovable, now owned or hereafter to be acquired, and its rights and franchises in the States of Louisiana, Mississippi, Tennessee and Kentucky to Adolph Schreiber of the City of New Orleans in the State of Louisiana, James Fentress of Bolivar in the State of Ten-
nessee, and Lewis V. F. Randolph of the City of 124
New York in the State of New York, as Trustees:

Resolved, That numbers one to one thousand one hundred and ninety-nine inclusive of said Bonds, shall be set apart to provide, under the acts of the State of Tennessee, for and to be substituted for the Bonds of the State of Tennessee, issued to the Mis-

sissippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company, to be registered and certified pursuant to said statutes of said State of Tennessee, by the Comptroller thereof, and to be issued to the party or parties paying the lien of the State, or to furnish the means to pay and satisfy said lien, and to be entitled to and in fact become, and as provided by the acts of the State of Tennessee aforesaid, a lien in the nature of a first mortgage upon the property of this Company in the State of Tennessee, the same precisely as is now declared to exist in favor of said State, under and by virtue of the statutes thereof in pursuance of which the loan and advance of State Bonds was made to the Company or Companies, of whose rights and property this Company has succeeded, and with all rights, privileges and liens created by said statutes, and all powers to enforce the same originally residing in said State;

Resolved, That said Bonds from numbers one thousand two hundred, to four thousand one hundred and forty inclusive, shall be reserved and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of providing for the purchase or payment of the outstanding first Mortgage Bonds of the New Orleans, Jackson and Great Northern Railroad Company, being two thousand nine hundred and forty-one of said Bonds;

Resolved, That said Bonds numbered from four thousand one hundred and forty-one to five thousand six hundred and forty inclusive, shall be reserved, and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of providing for the payment or purchase of the outstanding second mortgage Bonds of the New Orleans, Jackson and Great Northern

Railroad Company, being one thousand five hun- 129
dred of said Bonds;

Resolved, That said Bonds numbered from five thousand six hundred and forty-one, to six thousand one hundred and forty inclusive, shall be reserved, and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of paying and liquidating, the outstanding and unpaid coupons under said first and second mortgages of said New Orleans, Jackson and 130
Great Northern Railroad Company, and the Matured Coupon Bonds issued to provide for the postponement of the date of payment of the said Coupons, being five hundred of said Bonds;

Resolved, That said Bonds numbered from number six thousand one hundred and forty-one, to seven thousand one hundred and thirty-two inclusive, shall be reserved, and shall be deposited with said Trustees, and shall be used for the purpose of 131
being exchanged for, or cancelling, or providing for the payment or purchase of the outstanding Bonds under the first mortgage of the Mississippi Central Railroad Company, being nine hundred and ninety-two of such Bonds, or so many thereof as shall be needed to cancel and extinguish all of said Bonds, which are outstanding, and are legal and valid obligations;

Resolved, That said Bonds numbered from seven thousand one hundred and thirty-three, to nine 132
thousand one hundred and twenty-nine inclusive, shall be reserved and shall be deposited with said Trustees, and said Bonds or so many thereof as shall be necessary, shall be used for the purpose of being exchanged for, or of providing for the payment and satisfaction of the outstanding Bonds under the second mortgage of the Mississippi Central Railroad

132 Company, which are legal and valid obligations; and none of said Bonds referred to in this or the last resolution. shall be removed from said deposit or used for any other purpose, until the whole of said first and second mortgage Bonds of the said Mississippi Central Railroad Company which are outstanding and valid obligations shall be paid or cancelled;

Resolved, That said Bonds numbered from nine
134 thousand one hundred and thirty to ten thousand three hundred and fifty inclusive, shall be reserved and set apart, and shall be used for the purpose of paying and satisfying the outstanding coupons and scrip, and other liens which may be valid, and prior to this mortgage upon the property, railroad and franchises which were of the said Mississippi Central Railroad Company, until all such liens are cancelled, being one thousand two hundred and twenty-one of said Bonds, or so many thereof as
135 shall be necessary for the purpose of cancelling and satisfying said coupons, scrip and liens;

Resolved, That said Bonds numbered from number ten thousand three hundred and fifty-one to ten thousand eight hundred and fifty inclusive, being five hundred of such Bonds, shall be used and issued to supply the means to take up and pay any remaining prior liens or incumbrances upon the property hereby mortgaged, any deficiency in any of the particular appropriations hereinbefore made,
136 and the general expenses of said trust;

Resolved, That the residue of the Bonds shall be placed in the hands of the said Trustees, and shall be executed by the President of the Company, and certified by the said Trustees only upon expenditures made, or liabilities incurred:

First—In the payment of any coupons now over-

due and not postponed, upon the first and second 137
mortgage Bonds of the New Orleans, Jackson and Great Northern Railroad Company, and upon first mortgage Bonds of the Mississippi Central Railroad Company, not hereinbefore specially provided for; *Second.*—In constructing and improving the line of Railroad of this Company, with its switches, turn-outs, branches, side-tracks and equipments, or for payment of debts, or liabilities already incurred for such construction and improvement; and upon evidence satisfactory being furnished to the 138
said Trustees of the amount required to discharge debts and liabilities incurred, or necessary to incur, in improving, completing and putting the said Railroad in order as a first class railroad, or in procuring additional equipment therefor, they shall deliver to the said corporation, or to purchasers of said bonds so many of the said bonds as they shall deem equivalent to the amount of said expenditures, until the said line from New Orleans to the Ohio river as aforesaid, shall be fully completed 139
and equipped as a first-class railroad, or until the whole number of the said thirteen thousand bonds, after applying such portion thereof as has been by these resolutions specifically appropriated shall have been delivered to the Company or to the purchasers thereof;

Resolved, That the said mortgage to be executed for the security of the said bonds, shall contain the ordinary provisions and conditions, as shall be ad- 140
vised by counsel, and, generally the following covenants and agreements;

First.—That until default this company shall retain the possession and use of the mortgaged premises;

Second.—That this company will pay and dis-

charge all taxes or assessments which may be imposed upon the mortgaged premises or any part thereof;

Third.—That in case of default in the payment of any of the coupons or interest warrants, on any of the said bonds, as such they respectively become payable, and the continuance of such default for ninety days, or of default in the payment of the principal when the same becomes due or of any breach of any of the conditions or covenants in the said mortgage contained, the said mortgage shall become due and payable at the option of the holders of one million ($1,000,000) dollars of said bonds, and the said trustees as aforesaid or their successors shall upon demand of the holders of said bonds to the amount of one million ($1,000,000) dollars of said bonds, and the said trustees as aforesaid or their successors shall, upon demand of the holders of said bonds to the amount of one million ($1,000,000) dollars, enter into and upon said railroad, and operate and use the same, for the benefit of the holders of said bonds, as may be authorized by law, and shall thereafter upon like demand, take proceedings for the foreclosure and sale of the railroad and premises, for the benefit of the holders of said bonds; provided that if this company or its successors or assigns, shall after any such forfeiture has been made or suffered, and the principal of said bonds has been made due in consequence, and before a sale of said premises has been actually had under said mortgage, pay or tender the amount of interest in arrears, with interest thereon, and all costs and expenses incurred in proceeding to foreclose said mortgage, such forfeiture shall be waived, and this company shall be entitled to repossess itself of said property, and such mortgage shall stand as if no default had occurred;

Fourth.—That all the said bonds now authorized 145
to be issued, or which may be sold and negotiated, are upon an equality so far as regards the security, upon the entire property described in such mortgage, and shall be upon like equality in the payment thereof, except the bonds issued in payment or substitution for the bonds of the State of Tennessee, to the amount of one million one hundred and ninety-nine thousand ($1,199,000) dollars, which besides and in addition are by law entitled to, and are to be recognized as holding the first lien in pre- 146
ference to the residue of said bonds, and to all other obligations, mortgages or debts whatever, upon the railroad and property of this corporation, within the limits of the State of Tennessee.

That in case of default in the payment of interest, or of the principal of any of the said bonds to be numbered from number one to number one thousand one hundred and ninety-nine inclusive, and which will bear the certificate of the Comptroller of the State of Tennessee, and will be substituted and 147
issued in exchange for bonds of said State, the said Trustees, upon the request of the holders of five hundred of said bonds, may appoint a Receiver, with the usual powers, rights and duties of Receivers, who shall enter upon and take possession of so much of the railroad and property of this Company as lies within the limits of said State of Tennessee, for and in behalf of said trustees and the holders of said bonds, for the protection and enforcement of the lien of said bonds, as succeeding to said State 148
under the statutes thereof; or the said trustees, upon the like request, may themselves, in case of any such default, enter upon and take possession of all that portion of said railroad and property within the State of Tennessee, as aforesaid, and manage and operate the same, so long as such default shall continue, for the benefit and protection

of the holders of said substituted bonds, in the same manner as a Receiver appointed by a proper Court having jurisdiction; and this Company, upon request of said trustees, in case of such default, will surrender to said trustees, or to the Receiver so appointed by them, the possession of said railroad within the State of Tennessee, and will suffer the use and occupation thereof, so long as such default continues, by or for the benefit of said trustees, or the holders of said substituted bonds;

Fifth.—That all the said bonds, after reservation of those hereinbefore specified, and the proceeds thereof shall be faithfully used and applied to the construction, completion and equipment of the railroad and property, structures and buildings of the said Company, the payment of debts or liabilities already incurred for the same, and of liens and charges prior to the said proposed mortgage;

Sixth.—That whenever and as often as the Company shall acquire any additional land, or other property, the same shall be held and possessed under and subject to the mortgage made to secure the said bonds;

Seventh.—That the Company will, from time to time, if thereunto requested by the trustees named in said mortgage, or their successors, execute and deliver any further deed or assurance for the better assuring and conveying its railroad, and property, and franchises, whether now owned, or hereafter acquired, for the securing of the payment of the principal and interest of said bonds;

Eighth.—That the said trustees or their successors, shall be empowered to make such releases or exchanges of any property, in said mortgage or deed of trust described, and which may not be need-

ed or used for the track, buildings or other purposes 153
of said road, as may be expedient, upon condition that the net proceeds of all property so released, shall be used only in the purchase of other property or equipment for the road, or in the payment of said bonds or obligations, and that all property taken in exchange shall become subject to said mortgage in like manner with the property exchanged;

And whereas to make the assurance and security 154
of this mortgage and deed of trust complete, and to remove any question that it will create a perfect lien upon the whole of said line of railroad, from New Orleans to the Ohio River, as aforesaid, and upon all the property, estate, franchises and interests which were at any time heretofore owned, or exercised or operated by the said New Orleans, Jackson and Great Northern Railroad Company or said Mississippi Central Railroad Company, the Corporation known as the New Orleans, Jackson and 155
Northern Railroad Company, and the Central Mississippi Railroad Company, parties of the second and third parts hereto, have agreed and the respective Boards of Directors thereof have authorized and directed, that the said Corporations should unite in the execution of this mortgage or deed of trust, to secure the bonds to be issued as hereinbefore mentioned.

Now this indenture witnesseth that the said parties of the first, second and third parts, in con- 156
sideration of the premises, and for securing payment of the bonds to be made and executed to the amount of thirteen millions of dollars, in lawful money of the United States, as hereinbefore mentioned, and the interest to accrue thereon, and in consideration of the sum of ten dollars lawful money of the United States, unto then well and truly paid

by the parties of the fourth part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, confirmed, assigned, transferred, and set over, and by these presents do grant, bargain, sell, release, confirm, assign, transfer and set over unto the said parties of the fourth part, and their lawful successors in the trust hereby created, all and singular the Railroad aforesaid, with its appurtenances, depots, depot grounds, branches, furniture and equipments, and all and every right, title or interest which said parties of the first, second, or third parts, or either of them, had or has, or shall hereafter acquire in, or to the same, being the line of Railroad formerly known, in part as the New Orleans, Jackson and Great Northern Railroad, and in part as the Mississippi Central Railroad, and subsequently, by the consolidation of said two Companies, as the New Orleans, St. Louis and Chicago Railroad, and now intended to be owned and operated as one continuous line of railroad, from New Orleans to a point at or near Fillmore, upon the Ohio River opposite Cairo, by the said party of the first part, with all its branches, extensions and appurtenances, and with all the real estate now owned by the said party of the first part, or by the said parties of the second and third parts, or either of them, or which may hereafter, for the purposes of said railroad, be owned or acquired by said party of the first part, and all rights of way, rails, tracks, workshops, machinery, depots, depot grounds, improvements, tenements, and hereditaments, now owned by said parties of the first, second and third parts, or either of them, or hereafter to be acquired by said party of the first part, its successors or assigns, for the construction, operation and management of the said railroad; together with all rolling stock, locomotives, tenders, cars and equipments, machinery, tools, implements and materials,

and all and singular the other personal property of every kind, nature and description, belonging to said party of the first part, or to the said parties of the second and third parts, now or hereafter in use, or intended for use upon the said railroad, or in connection with the proper equipment and operation of the same, and also all and singular the corporate rights, power and privileges, and franchises of the said party of the first part, now owned and possessed, or which may hereafter be required for the construction, maintainance and operation of said railroad, or connected with or relating to the same, and all the like corporate powers, rights, privileges and franchises of the said parties of the second and third parts, either of them, so owned and possessed, or which may be acquired by them or either of them, with all rights, privileges and appurtenances whatsoever, affecting any of the hereby granted and mentioned premises and estates, or thereunto belonging, and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, or of the said parties of the second and third parts, either at law or in equity, of, in to and the same and every part and parcel thereof.

To have and to hold the same, with the appurtenances, unto the said parties of the fourth part, their successors and assigns, in trust for the use, benefit and security of the several persons and their successors, administrators, executors, or assigns, who shall hereafter become the owners and holders of any of the bonds to the amount of thirteen million ($13,000,000) dollars, intended to be hereby secured, subject, however, to the right of the party of the first part, its successors and assigns to retain the free and uncontrolled use, enjoyment, possession and management of the premises hereby granted, or intended so to be, until by reason of default by said party of the first part, in keeping and performing

165 the covenants and agreements in this Indenture contained, or any of them, the said parties of the fourth part are, as hereinafter provided, authorized to enter upon and take possession of, or sell the said premises as hereinafter set forth ;

And it is hereby expressly covenanted and agreed by and between the parties hereto, covenanting and agreeing for themselves and their successors and assigns, and for all parties who shall become inter-
166 ested as holders, or owners of the bonds intended to be secured hereby, in manner following, that is to say ;

First.—That the said party of the first part, its successors and assigns, will punctually pay the holders of the bonds aforesaid, intended to be secured hereby, or any that may be issued and accepted in lieu or renewal or substitution of the same respectively. interest thereon semi-annually, as the same shall become due and payable, according to the
167 terms of said bonds and the coupons attached thereto, on the days and at the place therein respectively mentioned ; and also on the day and at the place mentioned in said bonds, and whenever the principal sum of the same, or any of them, shall, according to the provisions thereof, become due and payable, will fully and entirely pay off and satisfy the whole of said bonds, principal and interest, without deduction from either said principal or interest for any tax, levy or assessment imposed upon the pre-
168 mises, franchises and property hereby conveyed, or upon the principal or interest of said bonds, either by the United States of America, or by the States of Louisiana, Mississippi, Tennessee and Kentucky, or either of them ;

Second.—That if the party of the first part, its successors or assigns, shall at any time hereafter, after

demand made, make default or refuse, neglect or 169
omit, for any period exceeding three (3) months, to pay the semi-annual interest on the bonds intended to be hereby secured, or any of them, or any interest-warrant, or coupon, issued for the payment thereof, or shall, after demand made, make default or refuse or neglect or omit, for any period exceeding three (3) months, after their maturity, to pay the principal sums of each, and all of the said bonds intended to be hereby secured, or of any of them, then, and in the first case of default in the payment 170
of interest hereinabove stated, and upon demand of the holders of said bonds to the amount of one million ($1,000,000) dollars, the whole principal sum of the said bonds, shall forthwith become due and payable, anything in the said bonds, or in these presents to the contrary notwithstanding, and in such case, or in the case of default in the payment of principal of any of the said bonds, for three months after maturity of the same, the said trustees or trustee, for the time being, upon the written 171
request of the holders of one million ($1,000,000) dollars in amount of the said bonds then outstanding, shall enter upon, and take possession of the railroad, estates, real and personal, and premises hereby mortgaged, or agreed, or intended so to be, and operate, use manage and control the said railroad and premises to the best advantage, and appropriate the net income and proceeds derived therefrom, over and above running expenses, and interest on prior incumbrances, after deducting the ex- 172
penses of this trust, and any sum which may be necessary to indemnify said trustees or trustee, for any liability, loss, or expenditure, for or on account of any matter, or thing done by him, or them in good faith, in pursuance of his or their duty as such trustees, to the payment in full without preference—first of the interest, secondly of the prin-

cipal of all the aforesaid bonds then outstanding, if said income and proceeds be sufficient, but if not, then *pro rata*, subject only to the prior rights, lien and preference to which the holders of the bonds to be issued, as hereinafter mentioned, in substitution for the bonds of the State of Tennessee, shall be entitled in the application of the net income and proceeds of so much of the said railroad as lies within the boundaries of said State of Tennessee; and the said trustees or trustee shall also, in case of such default, after, or without entering upon and taking such possession, upon the written request of holders of a like amount of said bonds then outstanding, proceed to sell the said railroad, estate real and personal, corporate rights and franchises, and all the premises hereby mortgaged, or agreed, or intended so to be, to the highest bidder, at public sale, in the city of New York, first giving at least three months' notice of such intended sale, by publication, to be made twice in each week, in at least two daily newspapers published in the city of New York, and in one daily newspaper published in the city of New Orleans, and in one newspaper published in each of the said States of Mississippi, Tennessee and Kentucky, and convey the same to such purchaser or purchasers, free from all and every the trusts hereby created, and without liability to see to the application of the purchase money. And the said parties of the fourth part, their survivor or survivors, successor or successors in the trust for the time being, shall execute and deliver to the purchaser or purchasers a deed of the premises, which shall convey to him or them a full, valid, and indefeasible title to the said railroad, franchises and rights, and all the estate, real and personal property, movable and immovable, herein described, and hereby mortgaged and conveyed, or intended so to be, which shall be a

perpetual bar to any claim or demand thereto, or 177
to any part thereof, by the said parties of the first, second or third part, or their successors, or any person claiming or to claim, under them. or either of them. And the said parties of the first, second and third parts, for themselves, their successors or assigns, covenant, promise and agree, to and with the said parties of the fourth part, their survivor or survivors, successor or successors, and assigns, and their grantees, under any such conveyance, that they will never claim any right, title, interest or 178
equity in or to any portion of the mortgaged premises, in bar opposition or impeachment of the title passed thereby. Or the said parties of the fourth part, their survivors, successors or assigns, may, in their discretion, in case of any default in any of the covenants or conditions herein, foreclose the equity of redemption of the said parties of the first, second and third parts, and of all other persons having any legal or equitable rights, or claims, in or to the mortgaged premises, or any part or parcel thereof, 179
by any proceedings in law or in equity provided for by the respective States, in which portions of the said railroad are built, and in the Courts of such States, or in the proper Courts of the United States of America, having jurisdiction thereof;

And the said parties of the fourth part, in case of the sale of said premises under and by virtue of the power hereby granted and created, shall and will appropriate the purchase money thereof, after such 180
deductions made for the expenses of the Trust and of such sale, and indemnity to the Trustees as aforesaid, to the payment as aforesaid—*first*—of the interest due on, and,—*secondly*,—of the principal of the said outstanding Bonds, in full if said purchase money be sufficient but, if not, then *pro rata* and without preference, excepting only the

proceeds of so much of the said Railroad, and property as is situated within the State of Tennessee, and to which the holders of the substituted bonds certified by the Comptroller of said State, are entitled in preference as herein agreed: *Provided*, however, that if the said party of the first part, its successors or assigns, shall in case of any such default in the payment of such interest, or of any interest upon prior mortgages, hereinafter covenanted to be paid or provided for, at any time before a sale has been actually made, either under the power of sale herein contained or under the decree of any Court or Courts, pay or tender to said parties of the fourth part, or their successors, or to the parties entitled thereto, the amount of interest so in arrear with interest thereon, from the time of default, and all costs, counsel fees, commissions and expenses incurred in the proceedings for such sale, or in taking possession of and operating said railroad by said parties of the fourth part, any such default and forfeiture shall be opened, and the said party of the first part, its successors or assigns, shall resume possession of said railroad and premises, and all parties hereto shall be restored to their first rights, the said default and consequent proceedings notwithstanding, and as if the same had not occurred; and in the event of there being in the hands of the said Trustees any portion of the Trust Estate, or of the proceeds thereof, after payment in full of the principal and interest of the aforesaid bonds, the said Trustees shall reconvey or pay over the same to the party of the first part, its successors or assigns.

Third.—That the bonds to be issued under and by virtue of this mortgage, or deed of trust, and to be secured by it, shall be bonds of one thousand dollars each, and of the tenor and effect following:

UNITED STATES OF AMERICA. 185

States of Louisiana, Mississippi, Tennessee and Kentucky.

No.....

Chicago, St. Louis and New Orleans Railroad Company, First Mortgage Seven per cent. Loan.

The Chicago, St. Louis and New Orleans Railroad Company, acknowledges itself indebted to the bearer in the sum of one thousand dollars, which it 186
promises to pay in lawful money of the United States, on the first day of November, in the year one thousand eight hundred and ninety-seven, at its office in the City of New York, and to pay interest thereon at the rate of seven per cent. per annum, payable semi-annually at said office, in like lawful money, upon presentation and surrender of the interest warrants or coupons hereto annexed, on the first days of May and November, in each year, as they respectively become payable, so long as the 187
principal remains unpaid, without deduction for State or United States taxes.

This is one of thirteen thousand bonds of similar amount, tenor and date, referred to in a mortgage made by the said Chicago, St. Louis and New Orleans Railroad Company, and the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company to Adolph Schreiber of the City of New Orleans, in the State 188
of Louisiana, James Fentress of Bolivar, in the State of Tennessee, and Lewis V. F. Randolph of the City of New York, in the State of New York, Trustees, dated the eighth day of November, 1877, to secure the payment of such bonds, and when the certificate hereon endorsed, is subscribed by said Trustees, it will be secured thereby.

189 In witness whereof the said Chicago, St. Louis and New Orleans Railroad Company, has caused its common seal and the signatures of its President and Secretary, to be hereto affixed the eighth day of November, 1877.

Seal of the Chicago, St. Louis and New Orleans Railroad Company.

W. H. OSBORN,
President.

190 STUYVESANT FISH,
Secretary.

ENDORSEMENT.

The within is one of thirteen thousand bonds of one thousand dollars each, secured by a mortgage made by the Chicago, St. Louis and New Orleans Railroad Company, and the New Orleans, Jackson and Northern Railroad Company, and the Central
191 Mississippi Railroad Company, to the undersigned as Trustees, dated the 8th November, 1877, and has been duly issued in pursuance of the trust created and conditions contained in said mortgage.

November 8th, 1877.

ADOLPH SCHREIBER,
JAMES FENTRESS,
LEWIS V. F. RANDOLPH. } Trustees.

Fourth.—That the said bonds to be issued under this mortgage, numbered from number one to num-
192 ber one thousand one hundred and ninety-nine, inclusive, shall be set apart, issued to, or used by said party of the first part, or persons acting with its consent and authority, to provide and be substituted for the bonds of the State of Tennessee, heretofore issued to the Mississippi Central and Tennessee Railroad Company and to the Mississippi Central Railroad Company, and shall be registered and

certified, pursuant to the statutes of the State of 193
Tennessee, by the Comptroller thereof, and such bonds of the aforesaid numbers so certified shall be entitled to and in fact become, as provided by the acts of the State of Tennessee aforesaid, a lien in the nature of a first mortgage, prior to the lien of the residue of the bonds secured hereby, and to all other mortgages and liens whatever upon the property of the said parties of the first and third parts, in the State of Tennessee; and in case of any default in the payment of interest upon the bonds 194
hereby secured, or any of them, or of default in the payment of the principal sum at their maturity, and of possession being taken or a foreclosure and sale had by the trustees as herein provided, the holders of said bonds, numbered from number one to number one thousand one hundred and ninety-nine, issued under this mortgage, besides and in addition to their rights in common with other bondholders in the residue of said property and its proceeds, shall be entitled to priority in the appropriation of such in- 195
come and proceeds so far as the same shall be derived from the portion of the said railroad hereby mortgage within the limits of said State of Tennessee, as well as to an equal and *pro rata* share in the income and proceeds of the residue of said mortgaged property with the residue of the bonds secured hereby.

Fifth.—That the said bonds to be issued under this mortgage, numbered from number one thousand 196
two hundred to number four thousand one hundred and forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of purchasing, or of being exchanged at par for the outstanding mortgage bonds heretofore issued by the New Orleans, Jackson and Great Northern Railroad Company, which are a

prior lien upon the railroad and property heretofore owned and operated by the same. And the said two thousand nine hundred and forty-one bonds shall be used and employed for no other purpose whatever, until the maturity of such outstanding bonds of said New Orleans, Jackson and Great Northern Railroad Company, which may not be so exchanged, whereupon the said party of the first part may sell the same under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid, and if there shall remain none unpaid, or when all of them shall be paid, any unsold bonds then remaining shall be delivered to the said party of the first part;

Sixth.—That said bonds to be issued under this mortgage, numbered from number four thousand one hundred and forty-one to five thousand six hundred and forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par, or sold to pay or redeem or purchase the outstanding second mortgage bonds of the New Orleans, Jackson and Great Northern Railroad Company, hereinbefore mentioned. And said one thousand five hundred bonds shall be used and employed for no other purpose whatever until the maturity of said outstanding second mortgage bonds which may not be so exchanged, whereupon said party of the first part may sell the same, under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid, and if there shall remain none unpaid, and when all of them shall be paid, any of said one thousand five hundred bonds, then remaining, shall be delivered to said party of the first part;

Seventh.—That the said bonds to be issued under this mortgage, numbered from number five thousand six hundred and forty-one, to number six thousand one hundred and forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par for, or of paying and liquidating the outstanding and unpaid coupons under said first and second mortgages of said New Orleans, Jackson and Great Northern Railroad Company, provided for by the matured coupon bonds and mortgage of the New Orleans, Jackson and Northern Railroad Company, until said coupons or said matured coupon bonds, shall be fully paid and satisfied or cancelled; and if there shall then remain any of said five hundred bonds, after all such coupons shall be paid or cancelled, the same shall be returned and delivered to the party of the first part;

Eighth.—That the said bonds to be issued under this mortgage, numbered from number six thousand one hundred and forty-one, to number seven thousand one hundred and thirty-two, inclusive, shall be reserved, and shall be deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par for, or of furnishing the means to pay and cancel or purchase the outstanding bonds under the first mortgage of the Mississippi Central Railroad Company, hereinbefore mentioned; and said nine hundred and ninety-two bonds shall be used and employed for no other purpose whatever, until the maturity of said outstanding first mortgage bonds of the Mississippi Central Railroad Company which shall not be so exchanged, which are legal and valid obligations against said Company, and entitled to a lein upon the premises mortgaged hereby or some portion thereof formerly owned by said Company; where-

upon the said party of the first part may sell the same under the direction of the parties of the fourth part and apply the proceeds to the payment of any such outstanding bonds then unpaid, which are legal and valid obligations as aforesaid; and if there shall remain none unpaid, and when all of them shall be paid, any of said nine hundred and ninety-two bonds then remaining shall be delivered to the said party of the first part;

Ninth.—That said bonds be issued under this mortgage, to be numbered from number seven thousand one hundred and thirty-three to number nine thousand one hundred and twenty-nine, inclusive, shall be reserved, and shall be deposited with said parties of the fourth part, and said bonds shall be used for the purpose of being exchanged at par, or providing for the payment and satisfaction or purchase as herein directed, of the outstanding bonds under the second mortgage of the said Mississippi Central Railroad Company, which are valid and legal obligations, and a lien upon the property and premises hereby mortgaged, or some portion thereof heretofore owned by said Company. And the said one thousand nine hundred and ninety-seven bonds, or so many thereof as shall be necessary, shall be used for the purpose of being exchanged, or providing for the payment and satisfaction of the outstanding bonds, under the second mortgage of the Mississippi Central Railroad Company, which are legal and valid as aforesaid, and for no other purpose whatever, until the maturity of any of said outstanding bonds, which may be so exchanged; whereupon said party of the first part, may sell the same, under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid; and whenever shall remain none of said bonds unpaid, and

when all of them shall be paid and exchanged, any of said one thousand nine hundred and ninety-seven bonds then remaining, shall be delivered to the said party of the first part ; 209

Tenth—That the said bonds to be issued under this mortgage, to be numbered from number nine thousand one hundred and thirty, to ten thousand three hundred and fifty, inclusive, shall be reserved and set apart, and shall be used for no other purpose, than for paying and satisfying, or for the purpose of purchasing or being exchanged for the outstanding coupons and scrip issued for interest upon the first and second mortgages of which may be valid and prior to this mortgage, upon the property and franchises of said Company, until all said outstanding coupons, scrip and other liens, upon said property of the said Mississippi Central Railroad Company, shall be fully paid, satisfied, and canceled, when any of said one thousand two hundred and twenty-one bonds remaining unsold, or unissued, shall be delivered to the said party of the first part. 210 211

Eleventh.—That the said bonds to be issued under this mortgage, and numbered from number ten thousand three hundred and fifty-one to number ten thousand eight hundred and fifty inclusive, shall be used and issued from time to time to supply the means to pay each or any of the prior liens or incumbrances upon said premises hereby mortgaged, or any portion theref and the general expenses of the trust hereby created, and of the cancelling and satisfaction of the debts and liens referred to ; 212

Twelfth.—That the residue of the bonds to be issued under this mortgage, numbered from number ten thousand eight hundred and fifty-one to number thirteen thousand inclusive, shall be

used—First, to provide funds for the payment of coupons overdue and not postponed, upon the first and second mortgage bonds of the New Orleans, Jackson and Great Northern Railroad, and upon the first mortgage bonds of the Mississippi Central Railroad Companies, and not otherwise herein specifically and sufficiently provided for, and other debts and liens prior to this mortgage; Second, for the construction, completion and improvement of the line of railroad of the party of the first part, and its equipment, and for the payment of debts, or liabilities incurred for the same, and to put the said railroad in order as a first-class railroad, with sufficient equipment to operate the same. And upon evidence being furnished to the parties of the fourth part, or their successors, that any expenditure has been made, or liability incurred for such construction or improvement, since the tenth day of March, 1876, they shall deliver to the said party of the first part, or to the purchasers of the said bonds, so many of said bonds, or the proceeds therof, as shall be equivalent to the amount of such overdue coupons so paid, or of such expenditures so made or incurred, until all such debts, liens and coupons shall be fully paid, and until the said line from New Orleans to the Ohio River, as aforesaid, shall be fully completed and equipped as a first-class railroad, or until the whole number of the said thirteen thousand bonds, after applying such portions as have been heretofore by these presents specifically appropriated, shall have been delivered to the said party of the first part, or to the purchasers thereof;

And the said party of the first part, for itself, its successors and assigns, doth covenant and agree with the said parties of the fourth part and their successors, and to and with the holders of the bonds

to be issued and secured under this mortgage, that 217
they will at all times, until the existing mortgages hereinbefore mentioned, upon the property hereby mortgaged, or certain portions thereof, shall have been extinguished by the substitution of the bonds hereby secured, for the bonds issued under said prior mortgages, or by the payment thereof, keep, pay, and discharge any and all interest which shall become due and payable, upon the bonds secured by said prior mortgages. And that all the said bonds to be issued 218
under and secured by this Indenture, after reservation of those hereinbefore specified, and the proceeds thereof, shall be faithfully used and applied to the construction, completion and equipment of the railroad property, structures and buildings of the said party of the first part, and to the payment of liens and charges thereon, as aforesaid;

And the parties aforesaid, for themselves, their successors and assigns, do respectively further 219
covenant, promise and agree that, in case default shall at any time be made in the payment of any interest upon any of the said bonds numbered from number one to number one thousand one hundred and ninety-nine inclusive, which will bear the certificate of the Comptroller of the State of Tennessee, and will be bonds substituted or issued in exchange for the bonds of said State, or in the payment of the principal of said bonds at their maturity, and provided the holders of 220
five hundred of said bonds, shall in writing request or demand the same, the said parties of the fourth part, or their successors, may and will appoint a suitable person to take possession of so much of said road and its appurtenances, as lie within the limits of the State of Tennessee, and are subject to the prior and special lien of the bonds aforesaid with the

usual powers and duties of a Receiver, and in like manner as the Governor of said State under the statutes thereof, would appoint such Receiver, if the State had continued to hold its lien without transfer of the same;

Or in the event of any such default, and upon the like request of the holders of five hundred of said bonds, the said Trustees may and will themselves enter upon, and take possession of said road, and its appurtenances, within the State of Tennessee aforesaid, and operate and manage the same, and apply the net earnings thereof to the payment and satisfaction of the interest, or the principal of said bonds, so in arrears, in like manner, and with the same rights, powers and duties as would be possessed and exercised by a Receiver, who should be appointed by a Court of competent jurisdiction in such a case. And the said party of the first part, its successors and assigns, in case of such default, upon the request, or demand of said parties of the fourth part or their successors, will forthwith surrender to said parties of the fourth part, or their successors, or to the agent or Receiver, appointed by them, the possession and control of said railroad, within the State of Tennessee, in the same manner as they would surrender the same to a Receiver appointed by a competent Court, or to a Receiver who should be appointed by the Governor of the State of Tennessee, under the statutes aforesaid, if such default had occurred before any transfer of its lien or rights by said State.

And it is further covenanted and agreed by and between the parties hereto, their successors and assign, that whenever and as often as the said party of the first part, or its successors, shall acquire any franchises, lands equipment, or other property or interest of any name or nature, for the use of,

or in connection with its railroad, or for the pur- 225
poses of its incorporation, the said company, its successors or assigns, shall, and will acquire, possess and hold the same, and every part and parcel thereof, upon and subject to the lien and trusts of this Indenture; and that the said party of the first part, its successors and assigns, will from time to time, and at all times hereafter, and as often as thereunto requested by the parties of the fourth part, their successor or successors, execute and de-
liver any and all further deeds, conveyances and 226
assurances in the law for the better assuring unto the said parties of the fourth part, or their successors upon the trusts herein mentioned, all their railroads, its equipment and property of every nature, now owned or which may be hereafter acquired, including the franchise to be a corporation; and that in case the said party of the first part, its successors or assigns, shall thereafter receive or acquire lands or other property, and the said parties of the
fourth part, their successor or successors, in behalf 227
of the holders of the bonds issued under this Indenture, shall deem it for the interest of their trust, and shall request the same, the said party of the first part, and its successors, will, from time to time, execute, and deliver, any and every such other mortgage or deed of trust or further assurance covering the lands or property so received, or acquired, which shall be necessary to hold and bind the same, as security for the payment of the principal and interest of the bonds aforesaid, and performance of the 228
covenants and stipulations of this Indenture.

And it is further covenanted and agreed, that it shall and may be lawful for the said party of the first part, its successors, or assigns, at any time or times hereafter, to exchange for other property or sell any part of the hereby mort-

229 gaged premises, other than the said Railroad, which may not be necessary for the uses and purposes of such Railroad, and to convey the same, without liability on the part of the grantee as to the disposition of the purchase money or of the property received in exchange by the party of the first part, and the said parties of the fourth part, or their successors, shall and will, on the request of the party of the first part, its successors or assigns, execute all necessary releases for that purpose, the party of
230 the first part covenanting, that the proceeds of any sale so made shall be invested by it, either in the improvement of the remaining part of the mortgaged premises, or in the purchase of other property, real or personal, for the uses of its Railroad, which property so purchased, as also any acquired in exchange, as aforesaid, shall be subject to all the trusts hereby created of the property described in this Indenture, or in the purchase of bonds issued hereunder, which bonds, so purchased, shall be
231 forthwith cancelled and delivered to the parties of the fourth part, and the said parties of the fourth part and their successors may also, in their discretion, on the request of the party of the first part, consent to any change in the location of the track of said Railroad, or the depots and buildings, or structures thereof, as may seem expedient, and are authorized to make and deliver all instruments necessary and proper to effect such objects. And the party of the first part further covenants and
232 agrees that whenever it, or its successors or assigns, shall acquire any lands, property or franchises, or equipments of any nature or description, for use in connection with said Railroad, by any such change in the location of the tracks, depots or buildings thereof, or otherwise, they will hold the same upon and subject to the trusts of this Instrument, until conveyances thereof shall have been made and de-

livered, if required; and the party of the first part, 232
and its assigns or successors, shall and will, whenever so requested, execute and deliver such further conveyances and assurances, for the better assuring to the parties of the fourth part, and their successors, upon the trusts herein expressed, any property, real or personal, movable or immovable, to which the said party of the first part, or its successors or assigns, may become entitled, by any purchase or exchange, or alteration in the location of the tracks, depots or buildings of said Railroad, as 234
aforesaid.

And it is further covenanted and agreed, by and between the parties hereto, that in case of the death, resignation or inability of either of said parties of the fourth part, hereinbefore named as the Trustees under this indenture, the franchises, rights and property of every description herein conveyed to them shall at once vest in the survivor or survivors, and that such survivor or survivors may, with the 235
assent of the party of the first part, designate a person or persons to succeed such person or persons dying, or resigning, or unable to act as one of the parties of the first part. And upon the person or persons so designated delivering to such survivors and to the said party of the first part, or its successors, a written acceptance of the trust, he or they, as the case may be, shall become the successor or successors of the person or persons so dying, resigning or becoming unable to act with all the rights 236
and powers herein and hereby vested in the said parties of the fourth part. And in case all parties of the fourth part shall die, resign, or become unable to act, as aforesaid, so that there shall be no Trustees to discharge the trusts and duties created by this Instrument, or if any survivor or survivors and the party of the first part shall not agree in the

choice of a person or persons to succeed to and fill any such vacancy, persons to succeed thereto or to fill said trusteeships, or any of them, may be appointed by the Chief Justice of the Supreme Court of the State of Louisiana, on the application of the party of the first part, or of any such surviving Trustee or Trustees, or of holders of at least one hundred bonds to be issued hereunder, as aforesaid, provided that notice of the application be previously published in at least three daily papers in the City of New York, and in one newspaper published in each of the States of Louisiana, Mississippi, Tennessee and Kentucky for four successive weeks, one in each week.

And the said party of the first part, its successors and assigns, further covenants and agrees to pay to the said parties of the fourth part, and each of them, annually, for their ordinary services under this trust and in the discharge of the duties hereby created the sum of three hundred ($300) dollars, together with any necessary expenses actually incurred for clerk hire and legal advice, and it is further covenanted and agreed, and this trust is accepted upon the express condition that the said Trustees, parties of the fourth part, shall not nor shall their successors, or any future Trustee or Trustees, incur any liability or responsibility whatever, in consequence of permitting or suffering the said party of the first part to retain or be in possession of the railroad property and premises hereby mortgaged or any part thereof, or for any destruction, deterioration, loss or damage which may be done to or incurred by the railroads or estates hereby mortgaged, either by the act or default of such party of the first part, or its agents or servants, or of any other person or persons whomsoever, or for the consequences of any breach on the part of the party of the first part, or

the parties of the second or third parts, of any covenants herein contained, or of any act of the party of the first part, its agents or servants, or of the parties of the second or third parts, nor for any other matter or thing except for their or his own wilful or negligent breach of the trusts herein expressed and contained ; 241

And it is expressly covenanted and agreed, by and between the parties aforesaid, that all and singular the covenants, conditions and agreements herein contained, shall extend and apply to the successors and assigns ef the respective parties, whether they be expressly named therein or not ; 242

And it is hereby expressly provided, and this Indenture is made upon condition that, if the said Chicago, St. Louis and New Orleans Railroad Company, its successors or assigns, shall well and truly pay, or cause to be paid, all the interest, without deduction of any taxes or assessments, as the same shall from time to time become due and payable upon the said bonds, as hereinbefore stipulated, and shall pay the said principal of said bonds at maturity, according to the tenor and intent thereof, and shall keep and perform all and every the covenants herein contained on the part of the said Company, then and in that case this Indenture shall be and become null and void, and the estate hereby granted or conveyed, or agreed so to be, shall be void and of no offect, anything herein contained to the contrary notwithstanding ; otherwise this Indenture and the estate hereby granted and conveyed, shall be and remain in full force. 243 244

In Witness Whereof, the said Chicago, St. Louis and New Orleans Railroad Company, hath caused its common seal and the signatures of

its President and Secretary to be hereto affixed; and the said New Orleans, Jackson and Northern Railroad Company hath also caused its common seal and the signatures of its President and Secretary to be hereto affixed; and the said Central Mississippi Railroad Company, hath also caused its common seal and the signatures of its President and Secretary to be hereto affixed; and the said Adolph Schreiber of the City of New Orleans in the State of Louisiana, James Fentress of Bolivar in the State of Tennessee, and Lewis V. F. Randolph of the City of New York in the State of New York, Trustees, have hereunto set their hands and seals, all of which is done the eighth day of November, the year of our Lord one thousand eight hundred and seventy-seven.

Seal of the Chicago, St. Louis and New Orleans Railroad Company.

The Chicago, St. Louis & New Orleans Railroad Company, by
W. H. OSBORN, President.
STUYVESANT FISH, Secretary.

Seal of the New Orleans, Jackson and Northern Railroad Company.

The New Orleans, Jackson & Northern Railroad Company, by
W. H. OSBORN, President,
STUYVESANT FISH, Secretary.

The Central Mississippi Railroad Company, by 249

Seal of the Central Mississippi Railroad Company.

W. H. OSBORN, President.
STUYVESANT FISH, Secretary.

Signed, sealed and delivered by the said Messrs. Osborn and Fish in their said respective capacities in our presence.

L. E. SIMONDS,
W. W. FINLEY. 250

[L. S.] A. SCHREIBER,
[L. S.] JAMES FENTRESS, } *Trustees.*
[L. S.] L. V. F. RANDOLPH,

L. E. SIMONDS, ANDREW HERO, JR. } Witnesses to the signatures of A. Schreiber and Jas. Fentress.

W. J. MAURIAC, W. E. RUTTAN, } Witnesses to the signature of Lewis V. F. Randolph. 251

252

253 RESPONDENT'S EXHIBIT NO. 2.
W. H. D. L., Spl. Exr.

"STATE OF TENNESSEE.

We, James D. Porter, Governor, and Charles N. Gibbs, Secretary of State of the State of Tennessee, do hereby certify—pursuant to section 6 of an Act entitled 'An Act to liquidate the State debt contracted in aid of Railroad Companies in the State of Tennessee,' passed Eebruary 25, 1869, that Adolphe
254 Schreiber, James Fentress and Lewis V. F. Randolph (Trustees under a certain mortgage made the eighth day of November, 1877, between the Chicago, St. Louis and New Orleans Railroad Company, of the first part; the New Orleans, Jackson and Northern Railroad Company, of the second part; the Central Mississippi Railroad Company, of the third part, and the said Trustees of the fourth part), as Trustees for the purchasers and holders of the bonds to be issued under said mortgage, number-
255 ed from number one to number one thousand one hundred and ninety-nine, inclusive, have paid in and delivered up bonds and coupons of the State of Tennessee as authorized by the Act aforesaid equal in amount to the indebtedness heretofore created by the Mississippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company, and which is a first lien on the Railroad and property heretofore known as the Mississippi Central Railroad, lying in the State of Tennessee,
256 and has become a debt of, and a first lien upon the property of the Chicago, St. Louis and New Orleans Railroad Company, its successor, in the State of Tennessee; that such payment was made by and with the written consent of the Board of Directors of the Central Mississippi Railroad Company and of the Chicago, St. Louis and New Orleans Railroad Company, as allowed by the statutes of Ten-

nessee, and that the said Trustees, for and in behalf 257
of the holders of said bonds to be issued under said mortgage to provide and be substituted for the debt of the State of Tennessee so paid, are substituted and entitled to all the liens against said property for the payment of said debt that the State of Tennessee had or has by law.

And we do hereby, as provided and authorized in the Act of February 25, 1869, and acts amendatory thereof, in the name of the State of Tennessee and in 258
her behalf and for the considerations above-named, assign and transfer to the said Adolphe Schreiber, James Fentress and Lewis V. F. Randolph, Trustees as aforesaid, all the debt and lien of the State of Tennessee on the Railroad and property heretofore owned in said State, by the Mississippi Central and Tennessee Railroad Company and on all the railroad and property in said State heretofore known as the Mississippi Central Railroad, now known as the 259
Chicago, St. Louis and New Orleans Railroad, which said State has or had on the same by reason of the internal improvement laws of said State, and the fact that said State had granted aid to said railroads under the statutes thereof, with all the rights, privileges and powers which said State has or had for enforcing said lien; the object being to substitute the said Trustees for the State, and to place them in the same position and with the same rights 260
which the State of Tennessee had previous to and before the said payment and delivery of State Bonds, with full power to enforce the same in any and every manner in which the said State may or might.

This the 28th of November, A. D. 1877.

In witness whereof, I, JAMES D. PORTER,
Governor of the State of Tennessee,

261 have hereto set my hand and caused the great seal of the State of Tennessee to be hereunto affixed, this 28th of November, 1877.

(Sd.) JAS. D. PORTER,
Governor.

In witness whereof, I, CHAS. N. GIBBS, Secretary of State, have hereto set my hand and the great seal of the
262 State of Tennessee, this November 28, 1877.

(Sd.) CHAS. N. GIBBS,
[L. S.] *Sec. State.*

263

264

Deposition of Dempsey Weaver.

UNITED STATES CIRCUIT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE.

1

CALVIN AMORY STEVENS

vs.

The NASHVILLE & NORTHWESTERN RAILROAD COMPANY *et al.*

2

SAME

vs.

The McMINNVILLE & MANCHESTER RAILROAD COMPANY *et al.*

In Equity.

SAME

vs.

The WINCHESTER & ALABAMA RAILROAD COMPANY *et al.*

3

SAME

vs.

The MEMPHIS, CLARKSVILLE, & LOUISVILLE RAILROAD COMPANY.

4

(Western District of Tennessee.)

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(Sd.) JAS. D. PORTER,
Governor.

In witness whereof, I, CHAS. N. GIBBS, Secretary of State, have hereto set my hand and the great seal of the State of Tennessee, this November 28, 1877.

(Sd.) CHAS. N. GIBBS,
Sec. State.

[L. S.]

Deposition of Dempsey Weaver.

UNITED STATES CIRCUIT COURT

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In Equity.

SAME

vs.

3

The WINCHESTER & ALABAMA RAILROAD COMPANY *et al.*

SAME

vs.

The MEMPHIS, CLARKSVILLE, & LOUISVILLE RAILROAD COMPANY.

4

(Western District of Tennessee.)

5 The deposition of DEMPSEY WEAVER, taken by consent, to be read in evidence for complainants in above cases :

nter. 1. Please state your age, residence and occupation ?

Ans. to Int. 1. I am in my sixty-fifth year. Am a banker.

Int. 2. Were you a party to the suit in the Chancery Court at Nashville, Tennessee, wherein the
6 State of Tennessee was complainant and the Edgefield & Kentucky Railroad Company and others were defendants, the purpose of which suit was to sell the delinquent railroads in the State ?

Ans. to Int. 2. I was a party to the suit in question ?

Int. 3. By whom was your answer in that suit written ?

Did you retain a lawyer to write and file said answer and defend your interests in said suit, and if
7 so, whom ?

Did you pay any lawyer a fee for filing your answer and representing you in the case ?

Were you in favor of or opposed to the sale of the delinquent railroads by the State under the Acts of 1869 and 1870 ?

How did you happen to be made a party to said suit ?

Please state all the circumstances connected with the writing and filing of your answer in said suit,
8 and whether you felt any interest in the litigation as a bondholder claiming a lien on any of the defendant railroads ?

Ans. to Int. 3. Do not remember by whom my answer to that suit was written. Francis B. Fogg was my regular attorney for many years previous to and subsequent to that time, to attend to all my official and individual litigation. My recollection

is that Mr. W. B. Reese called on me for the num- 9
bers on my State bonds. Have no recollection of retaining a lawyer to write and file said answer and defend my interest, nor have I any recollection of paying any lawyer a fee for filing my answer and representing me in the case. I was in favor of the State selling the delinquent railroads under the several acts of the Legislature passed for that purpose. Don't remember now the particulars as to how I happened to be made a party to that suit. I have already stated all I now remember of the circum- 10
stances connected with the writing and filing of my answer in said suit.

I felt no particular interest in the litigation as a bondholder claiming a lien on any of the defendant railroads.

D. WEAVER.

Oct. 4th, 1879.

11

12

1

DEPOSITION OF ALBERT S. MARKS.

STATE OF TENNESSEE, COUNTY OF DAVIDSON.

CALVIN AMORY STEVENS, FOR HIMSELF AND OTHERS
vs.
THE CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY, ET ALS.
No. 317.

2

IN THE

3

United States Circuit Court,

OF WESTERN DISTRICT OF TENNESSEE, AT MEMPHIS, TENNESSEE.

Taken at Nashville, Tennessee, in the presence of S. Watson, Jr., solicitor for complainant, and James Fentress, solicitor for defendants.

4

The deposition of A. S. Marks, Governor of Tennessee, a witness for defendant.

Witness, being first duly sworn to speak the truth, deposes and says:

Question 1st (By Defendant's Counsel). Are you the

5 Governor of Tennessee, and if so how long have you occupied that position?

Answer. I am, and have occupied that position since my inauguration on January 17th, 1879.

Q. 2. Who was your immediate predecessor as Governor of Tennessee?

A. Hon James D. Porter.

Q. 3. Did the complainant in this suit, Calvin Amory
6 Stevens, either by himself, or attorney, or agent, prior to the bringing of this suit, make any application to you to appoint a Receiver of the Mississippi Central and Tennessee or Mississippi Central Railroad; if so, when?

A. There has been no application by Mr. Stevens to me or to the Executive Office of Tennessee to appoint a Receiver of the roads mentioned; nor has there ever been any application to the Governor of Tennessee since I have been in office, to appoint a Receiver of any railroad in Tennessee.

7 Q. 4. Has there been, prior to the bringing of this suit, any application by complainant, or any holder of the bonds of Tennessee, so far as you know, under the third section of the Funding Act of 1873, to set apart in the hands of the Treasurer any revenues of the State for payment of the interest on such bonds, as provided in said act?

A. To my knowledge there has been no such application.

8 *Cross-examination* by counsel for complainant:

Cross-Question 1. If complainant or any other bondholder had applied to you as Governor of the State to appoint a Receiver on defendant's road, would you have done so?

A. I would not.

(Defendant excepts to above question and answer as hypothetical and irrelevant.) 9

ALBERT S. MARKS.

Subscribed and sworn to before me, this March 24, 1880,

LEWIS T. BAXTER,
Clerk U. S. Circuit Court for Mid. District of Tennessee.

STATE OF TENNESSEE, Davidson County. 10

I, Lewis T. Baxter, U. S. Circuit Court Clerk, do hereby certify that the foregoing four pages of the deposition of A. S. Marks was taken before me to-day, and that said witness, after having the same read over to him, did on oath depose and say that the same is true.

In witness whereof, I have hereunto set my hand this the 24th day of March, 1880.

Seal of the Court.

LEWIS T. BAXTER,
Clerk U. S. Cir. Ct. Mid. Dist. of Tenn. 11

12

Deposition of Jno. C. Brown.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.* on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the Memphis & Charleston Railroad Company

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

Deposition of JOHN C. BROWN, witness for defendants, taken in Nashville, Tennessee, April 23d, 1880, before L. W. Humes, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee.

Taken pursuant to agreement.

Present—W. Y. C. HUMES, for Defendants.

JNO. C. BROWN, being first duly sworn, deposed as follows:

In answer to oral interrogatories, he states:

My name is Jno. C. Brown; I have lived in the State of Tennessee all my life, and am now fifty-

one years of age; I am a lawyer by profession and practice, and my residence is Pulaski, Giles County, Tennessee. From early manhood to the commencement of the war, and then from the close of it up to 1871, I devoted myself almost exclusively to the practice of my profession. I was elected President of the convention that revised the constitution in 1870, and presided over its deliberations. I was the first Governor elected under the new State constitution of 1870, and was inaugurated in 1871, and re-elected and inaugurated in 1873 for a second term. During the years 1869 and 1870, I was thoroughly acquainted with the sentiment of the people of the State. The acts for the sale of the insolvent and defaulting railroads originated in and were produced by a prevalent sentiment throughout the State that such measures would subserve the best interests of the State in retiring a part of its bonded debt, and to the same extent benefit the holders of her bonds. The acts of February 25, 1869, and January 20th, 1870, enabling the solvent roads to retire their debts to the State, originated in and were produced by the same sentiment, and by a sentiment that it would benefit the roads in their depressed condition by enabling them to use the State's first lien on their property to purchase up and pay the State debt in her bonds.

I was intimately acquainted with Dempsey Weaver during the years 1869 and 1870, and my administration as Governor. He was the President of the Third National Bank, and was then and had been for years a leading financial man residing at Nashville. I had frequent conversations with him during the years 1869 and 1870. He was the agent and correspondent of a very large number of the bondholders of Tennessee; he favored and approved for them the acts above referred to, as they would reduce the State debt and thereby increase her ca-

pacity to pay them. The railroads also favored it as measures of relief to them in their broken down condition.

The constitutional convention of 1870 passed no measure discriminating between any State bonds, nor has the Legislature, except as to a few issued to the Mineral Home R. R. Co. During my two terms as Governor, I received an immense number of letters from holders of State bonds from New York, Philadelphia, Baltimore and other places, stating that now the State had reduced her debt, and asking when she was going to resume payment of her interest. The bonded debt of the State had been reduced by the sale of the insolvent roads, and by some of the solvent roads having retired their debts under the acts of 1869 and 1870. I did not preserve their correspondence, but I know the bondholders were clamorous during the whole of my administration for the payment of their interest, and stated the retiring the bonded debt under the acts of 1869 and 1870 as one of the reasons why the State should be the more able to pay their interest. Not one of them ever intimated a right to go upon the railroads, or that this legislation was a violation of their rights. In my second gubernatorial canvass I advocated the funding of the unpaid coupons, and my opponents agreed with me as to this measure. I know Mr. Weaver, as agent of the bondholders, warmly and cordially approved this measure, and many others did also. Immediately after my inauguration in 1873 I sent into the Legislature a message advocating the funding act of 1873, and in that message was given an accurate statement in figures of the amount of State bonds that had been retired by the sale of delinquent roads and settlements with solvent roads under the acts of 1869 and 1870, accompanied also with the Comptroller's report, showing the same facts in detail. Mr. Weaver and

other correspondents of foreign bondholders called at the capitol and got a vast number of these printed messages and forwarded them to the foreign bondholders. I felt it my duty to ascertain thoroughly and accurately whether the bondholders approved or disapproved this funding measure. They approved it almost universally if not entirely so; I never heard of a dissent. After the passage of the measure nearly all of the holders funded their overdue coupons, and registered their old bonds under this act. The sale of the delinquent roads and the purchase of State bands by the solvent roads to settle their debts was publish all over the country, as well as the sale of the substitution bonds of the companies. Never from 1869 to the close of my administration in 1875, did I hear of State bondholders claiming that the State bonds issued to railroads or their coupons were due to them from the companies to which issued or claiming the lien. No such lien was ever set up during my official connection with the State, not even after the panic and financial depression had made it evident that it would be with the utmost difficulty the State could pay her interest, if at all.

I believe at the time of the passage of the acts of 1869 and 1870, and still believe, that the making of the settlements therein provided tended in a great degree to place the State in a position to resume payment of interest upon its entire debt; and the act of 1873, under which the debt was funded and registered, was made likewise, under the confident expectation that the interest would be punctually paid. And this undoubtedly would have been the result but for the subsequent panic and paralysis of the industries of the country. In order to force the several railroads that had not settled under the acts of 1869 and 1870 to do so, I sent either a message or the form of a resolution to the Legislature, re-

quiring the roads te settle in a given time, or, in default, withdrawing the privilege.

And further saith not.

JNO. C. BROWN.

Subscribed and sworn to before me this, April 23, 1880.

L. W. HUMES,
Special Examiner.

I, L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee, to take the testimony on behalf of the defendants in the above entitled suit, in the State of Tennessee, do hereby certify that the foregoing deposition was taken before me as stated in the caption, and reduced to writing, and subscribed to by the witness in my presence.

Witness my hand, this April 23, 1880.

L. W. HUMES,
Special Examiner.

1

Deposition of Maney Bell.

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

2

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the
RAILROAD COMPANY,

versus

THE
RAILROAD COMPANY *et al.*

3

Deposition of Maney Bell, witness for defendants, taken in Nashville, Tennessee, March 15th, 1880, before L. W. Humes, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee.

Taken pursuant to agreement,

Present—W. Y. C. HUMES, *for Defendants.*

4

MANEY BELL, being first duly sworn, deposed as follows:

My name is Maney Bell; am 30 years of age; reside at present in Nashville; am now and have been

5 since October, 1873, except a period of seventeen months, ten months from 1st of May, 1874, to 1st March, 1875, and seven months from March, 1877, to December, 1877, a clerk in the office of the Secretary of State for Tennessee; have in the office of Secretary ofState books containing receipts for bonds of the State of Tennessee issued to turnpike companies, banks, railroad companies, agricultural bureau, and for the purchase of the Hermitage, and construction of the State Capitol, and also for bonds issued un-
6 der acts to fund the past due indebtedness of the State given by the agents appointed to receive bonds of the State issued for above purposes respectively; these books contain receipts dated from 1836 to 1877; copies of receipt for each of above purposes are made a part of this deposition and are marked respectively Exhibits A., B., C., D., E., F., G., and H., I., J., K., L., and M.; said receipts show number of bonds received, numbers of bonds, date and series, and purpose for which the bonds are to be issued;
7 this was the rule, but there were exceptions in which they failed to specify the series; for every bond issued by the State as shown by these books, whether for State, turnpike, railroad, or other purpose, receipts were given by the agents appointed to receive them, except I find no receipts for special issues to Bank of Tennessee under act of 1832; the bonds issued for all purposes by the State after passage of the Internal Improvement Act of February 11th, 1852, were issued of
8 the current series, except the bonds issued to the Capitol Commissioners to be used only in the construction of the State Capitol, and two special issues of bonds (40 bonds), issued to turnpike companies. All bonds issued by the State prior to 1852, with the exception of the Series White "A" issued under Act of 1838, were special issues—in all, 3,500 bonds, special issues, about 500 of

which are still outstanding. Each series of bonds was distinguished by letter or color, or both, and by words on the face of the bond, showing under what act or acts it was issued, its number and date of maturity. There were several separate series of bonds issued under the Internal Improvement Act of Feb. 11th, 1852, and acts amendatory thereto, viz.: Series B white, C white, B green, and Series Green Bonds not lettered. I give order in which the different series were issued under Internal Improvement Act and its amendments, with number of bonds and date of maturity.

Series "B" white, Nos.			1	to	7,958,	due in	1892
"	"	"	7,909	"	11,806,	"	1898
"	"C"	"	1	"	1,878,	"	1898
"	No lettter green	"	1	"	8,470,	"	1892
"	"	"	8,471	"	10,000,	"	1900
"	"B"	"	1	"	5,203,	"	1900

Bonds of a particular series, issued under Act of 1851-2 and its amendments, were not confined to a particular railroad company or other internal improvement, but were issued alike for every purpose as application was made under the Acts. For example, of the Series "B" white, issued under said Act of Feb. 11th, 1852, 48 were issued for purchase of the Hermitage, 30 bonds to the Agricultural Bureau, and others to a Turnpike Company. Nearly every railroad received bonds of two or more series. The rule of issuing bonds, as shown by the receipts, was to issue to each proper applicant bonds whose number began with the number next after number of bond last issued, and of the current series. As to the question: "When was the fact first made known to the public of the numbers of the different series of bonds, and to what parties or corporations issued?" I answer that I find a printed statement in the form of a circular, issued

by Pennebaker, Comptroller, under date of July 25, 1870, setting forth the facts, but do not know that it was distributed generally; the fact first appears in the reports of the Comptroller in a report to the General Assembly of 1875, by Jno. C. Burch, Comptroller. The receipt books show that all bonds of the State, for whatever purpose issued, and of whatever series, were numbered consecutively from No. 1 to end of series, and that receipts were required and given for same from 1838 to 1877.

The New Series Funding Bonds, Green F, issued under Act of 1873, were issued for past due bonds and coupons of the State, and when $1,000 in past due coupons were presented, no matter from what series of Bonds, or for what purpose or to what Company or Companies, the Bonds from which they were clipped were issued a new bond of the Funding Bond series, was issued in lieu. But as the greater part of the Funding Bond series was issued in lots of two up, it would be impossible to say that any particular coupon was taken up by any particular bond of the lot. As an illustration, I give this instance, taken from funding books of 1873: $12,990 in past due coupons (being coupons cut from 44 State bonds), and $10 in currency, making $13,000, was funded into New Series Funding Bonds, Nos. 455 to 467, date of transaction August 22d, 1873. These coupon were clipped from Bonds for following purposes:

Series.	Originally issued to.	No. Coupons.	No. Bonds.	Am't.
White B.,	Memphis & Charleston R.R.,	10 Coupons each, from	5 Bonds,	$1,500.
"	East Tenn. & Geo.,	10 " "	1 "	300
"	Memphis & Ohio,	10 " "	5 "	1,500
"	McMinville & Manchester,	10 " "	6 "	1,800
"	Mississippi & Tenn.,	10 " "	1 "	300
"	East Tenn. & Va.,	10 " "	3 "	900
"	Memphis & Charleston,	10 " "	1 "	300
"	Mississippi Cent'l & Tenn.,	10 " "	1 "	300
"	Mobile & Ohio,	10 " "	1 "	300
"	Louisville & Nashville,	10 " "	1 "	300
"	Memphis, Cl'ksvlle & Louisville	10 " "	3 "	900
"	Nashville & Northwestern,	10 " "	2 "	600
White D.,	Funding Bonds 1866,	10 " "	8 "	2,400
Green ——	Memphis, Clk'sville & Lou'ville,	3 " "	1 "	90
"	" " "	10 " "	1 "	300
	Memphis & Ohio,	10 " "	1 "	300
	East Tenn. & Va.,	10 " "	1 "	300
	Cin., Cum. Gap & Charleston,	10 " "	2 "	600
	Cash,			10
				$13,000

Therefore could only say that any particular coupon in above lot was taken up by New Series Funding Bonds, Nos. 455 and 467, and further saith not.

MANEY BELL.

Subscribed and sworn to before me, March 6th, 1880.

L. W. HUMES,
Special Examiner.

EXHIBIT "A."

Nashville, Murfreesboro & Shelbyville Turnpike Company.

Capital Stock, $200,000.

WHEREAS, the undersigned are of opinion that two-thirds of the capital stock of the "Nashville, Murfreesboro & Shelbyville Turnpike Company have been subscribed by individuals and other corporations, and are well secured. Now, therefore,

we do hereby agree that the Governor subscribe, on behalf of the State, for the remaining third of said capital stock (being $66,666⅔), agreeable to the provision of an act, entitled "an act to encourage internal improvement in the State," passed February 19th, 1836.

In testimony whereof, we have hereunto set our hands, this 23d day of Jan'y, 1836.

N. CANNON.

LUKE LEA,
Secretary of State.
DANIEL GRAHAM,
Comptroller.
MILLER FRANCIS,
Treasurer.

Bonds issued 25th July, 1836.

EXHIBIT B.

HIWASSEE RAILROAD COMPANY.

NASHVILLE, November 3, 1838.

$97,000.

Received of Newton Cannon, Governor of Tennessee, 97 State bonds, from No. 2 to 98, dated the 1st day of November, 1838, issued for the benefit of the Hiwassee Railroad Company.

W. NICHOL,
President of the Bank of Tennessee.

EXHIBIT C.

Bonds for State Capitol.

NASHVILLE, April 1st, 1848.

$50,000.

Received of Neil S. Brown, Governor of the State of Tennessee, two hundred State bonds, letter A, from number one to number two hundred inclusive, of these and all intermediate numbers of the denomination of two hundred and fifty dollars each, bearing date the 1st day of April, 1848, which bonds are issued under the authority and the description as provided for in the 3d Section of an Act passed by the General Assembly of the State of Tennessee on the 24th January, 1848, entitled "an Act to continue the construction of the State Capital."

JNO. M. BASS,
President of the Board of Commission to Superintend the erection of the State House.

EXHIBIT D.

NASHVILLE, May 15th, 1850.

Received of William Trousdale, Governor of the State of Tennessee, twenty-one State bonds of one thousand dollars each, $21,000, being No. 765 to No. 785 inclusive, letter A, dated 13th May, 1850, issued for the benefit of the East Tennessee and Georgia Railroad Company.

WM. LEDBETTER,
President.

29 EXHIBIT E.

Received of Andrew Johnson, Governor of the State of Tennessee, forty-eight coupon bonds of the State of Tennessee, dated the first of January, 1856, and falling due first of January, 1890, first coupon falling due first of July, 1856, issued in pursuance of an Act entitled "an Act to purchase the Hermitage passed February 11th, 1866, commencing at 3,538 to 3,585, both of these numbers inclusive, on
30 the issuance of the above bond the coupon falling due first of July, 1856, on the following bonds was cut off 3,538-9-40-41-42-43-44-45-46 and destroyed.

March 29th, 1856.

A. JACKSON.

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31 EXHIBIT F.

Received of Andrew Johnson, Governor of Tennessee, thirty coupon bonds of said State for one thousand dollars each, from No. 4,442 to 4,471, both these numbers inclusive, bearing interest six per cent., first coupon falling due 1st January, 1857, bonds falling due 1st January, 1892, principle payable in New York; said bonds are issued in pursuance of the sixth Section of an Act passed 18th
32 February, 1856, entitled "an Act to amend an Act entitled an Act to establish a State Agricultural Bureau, &c., and for the purpose of purchasing permanent fair grounds and for other purposes."

July 19, 1856.

S. R. COCKRILL.
J. SHELBY.
W. G. HARDING.

EXHIBIT G.

COMPTROLLER'S OFFICE,

NASHVILLE, TENN., April 2, 1866.

A. Crawford has this day deposited in my office one thousand and twenty-six past due coupons of the bonds of the State of Tennessee for thirty dollars each, and two hundred and twenty dollars in cash, amounting to thirty-one thousand dollars, for which he is entitled to six per cent. coupon bonds of the State, under the Act passed 23d November, 1865.

S. W. HATCHETT,
Comptroller.

STATE OF TENNESSEE,
Executive Department,
NASHVILLE, Tenn., April 2, 1866.

$31,000.

No. 169 to No. 199.

Received of W. G. Brownlow, Governor of the State of Tennessee, thirty-one of the six per cent. coupon bonds of the State for one thousand dollars each, dated the 1st day of January, 1866, payable January 1st, 1891, and numbered from 169 to 199, inclusive. First coupons due 1st July, 1866. Said bonds are issued under the Act of November 23d, 1865, in lieu of that amount of past due coupons off the bonds of the State which are filed with Comptroller of the Treasury.

Given under my hand this 2d day of April, 1866.

A. CRAWFORD.

37 EXHIBIT H.

Bonds Issued to Comptroller.

NASHVILLE, Tennessee, February, 1869.

No. 1,701 to 2,200.

Received this day of William G. Brownlow, Governor of the State of Tennessee, five hundred of the six per cent. coupon bonds of said State for one thousand dollars each, principal and interest payable in the City of New York. The bonds fall due
38 the first of January, 1900. The first coupons fall due the 1st of July, 1870. Said bonds are of the Green issue, denoted by the letter C, and numbered from 1,701 to 2,200, both numbers inclusive, and are issued to the Comptroller under the Act of September 5, 1868, entitled "An Act to regulate the State finances."

G. W. BLACKBURN,
Comp't.

39 ———

EXHIBIT I

To Maney Bell's Deposition.

BONDS ISSUED TO COMPTROLLER.

Nos. 160 to 522.

NASHVILLE, Tenn., Sept. 21st, 1868.

Received, this day, of W. G. Brownlow, Gov-
40 ernor of Tennessee, three hundred and sixty-three bonds of said State, for one thousand dollars each, principal and interest payable in New York. The bonds fall due the 1st day of January, 1900, and the first coupons fall due the 1st day of January, 1869. Said bonds are issued to the Comptroller for the renewing of the bonds of the State that fell due the 7th day of May, 1868, under the Act of

Sept. 5th, 1868, entitled "An Act to provide for the renewing of the Bonds of the State," etc. Said bonds of the green issue, letter C, and numbered from 160 to 522, both numbers inclusive. 41

G. W. BLACKBURN,
Comptl.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of the State for State bonds, series C, from No. 160 to 522 inclusive, the original of which is now of record at my office. 42

In testimony whereof I have hereunto subscribed my official signature, and, by order of the Governor, [SEAL.] affixed the Great Seal of the State of Tennessee, at the Department, in the city of Nashville, this 18th day of March, A. D. 1880. 43

CHAS. N. GIBBS,
Secretary of State.

EXHIBIT J

To Maney Bell's Deposition.

BONDS ISSUED TO COMPTROLLER.

No. 523 to 1,000. 44

NASHVILLE, Tenn., Oct. 16, 1868.

Received, this day, of W. G. Brownlow, Governor of the State of Tennessee, four hundred and seventy-eight (478) of the bonds of said State, for one thousand dollars each, payable in New York, 1st day of January, 1900. The first coupons falling

due July 1st, 1869. Said bonds are of the green issue, of series C. and numbered from 523 to 1,000 inclusive. Said bonds are issued to the Comptroller for the renewing of the bonds of the State that fall due the 7th of May, 1868, under the Act of Sept. 5th, 1868, entitled "An Act to provide for the renewing of the bonds of the State," &c.

G. W. BLACKBURN,
Compt.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of State for State bonds, series C, from No. 523 to 1,000 inclusive, the original of which is now of record at my office.

In testimony whereof I have hereunto subscribed my official signature, and, by the order of the Governor, [SEAL.] affixed the Great Seal of the State of Tennessee, at the Department, in the city of Nashville, this 18th day of March, A. D. 1880.

CHAS. N. GIBBS,
Secretary of State.

EXHIBIT K
To Maney Bell's Deposition.

BONDS ISSUED TO COMPTROLLER.

No. 1001 to 1400.

NASHVILLE, TENN., September 21st, 1868.

Received of W. G. Brownlow, Governor of the State of Tennessee, four hundred of the six per cent. coupon bonds of said State, for one thousand dol-

lars each, principal and interest payable in New York—The bonds on the 1st day of January, 1900; said bonds are of the Green issue of the series C, and numbered from 1001 to 1400, both numbers inclusive. Said bonds are issued to the Comptroller of the State, under the act passed Sept. 5th, 1868, entitled "an act to provide for the renewing of the bonds of the State, &c.," to enable said officer to negotiate a loan for the purpose of discharging the liabilities of the State.

G. W. BLACKBURN,
Compt.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of the State for State bonds, series C, from No. 1001 to 1400 inclusive, the original of which is now of record at my office. In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, affixed the Great Seal of the State of Tennessee, at the Department in the City of Nashville, this 18th day of March, A. D. 1880.

CHAS. N. GIBBS,
(SEAL.) *Sec'y of State.*

53 EXHIBIT L

To Maney Bell's Deposition.

BONDS ISSUED TO COMPTROLLER.

No. 1401 to 1700.

NASHVILLE, TENN., Oct. 9, 1868.

Received of W. G. Brownlow, Governor of the State of Tennessee, three hundred of the six per cent. coupon bonds of said State, for one thousand dollars each, principal and interest payable in New
54 York, the principal on the 1st day of January, 1900, and the first coupons on the 1st day of January, 1869. Said bonds are of the Green issue and of the series——, and are numbered from 1401 to 1700, both numbers inclusive, and are issued to the Comptroller of the State under the act of Sept. 5th, 1868, entitled an act to regulate the finances of the State.

G. W. BLACKBURN,
Compt.

55 I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of the State for State bonds, from No. 1401 to 1700 inclusive, the original of which is now of record at my office. In testimony whereof, I have hereunto subscribed my official signature, and, by order of the Governor, affixed the Great Seal of the State of Tennessee, at the Department in the City of Nashville, the 18th day of March, A. D. 1880.

56 CHAS. N. GIBBS,
Sec'y of State.

EXHIBIT M

To Maney Bell's Deposition.

BONDS ISSUED TO THE COMPTROLLER.

No. 1701 to 2200.

NASHVILLE, TENN., Feb'y, 1869.

Received this day of William G. Brownlow, Governor of the State of Tennessee, five hundred of the six per cent. coupon bonds of said State, for one thousand dollars each, principal and interest payable in the City of New York. The bonds fall due the first day of January, 1900; the first coupons fall due the 1st of July, 1870. Said bonds are of the Green issue, denoted by the letter C, and numbered from 1701 to 2200, both numbers inclusive, and are issued to the Comptroller under the act of September 5, 1868, entitled "an act to regulate the State finances."

G. W. BLACKBURN,
Compt.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of the State for State bonds, series C, from No. 1701 to 2200 inclusive, the original of which is now of record at my office. In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor, affixed the Great Seal of the State of Tennessee at the Department, in the City of Nashville, this 18th day of March, A. D. 1880.

CHAS. N. GIBBS,
Sec't'y of State.

(SEAL.)

Deposition of S. R. Cruse.

1

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the Railroad Company,

versus

THE RAILROAD COMPANY *et al.*

2

Deposition of S. R. CRUSE, witness for defendants, taken in Memphis, Tennessee, March 20th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee, taken pursuant to agreement. 3

Present, W. Y. C. HUMES, for defendants.

S. R. CRUSE, being first duly sworn, deposed as follows:

My name is S. R. Cruse; age, years; I live in Memphis, Tennessee; I am Secretary and Treasurer of the Memphis & Charleston Railroad Company, and have been about years; I personally know that the Memphis & Charleston Railroad Company 4

has been in the exclusive and actual adverse possession of the entire track and road-bed of said railroad, from the City of Memphis to the western boundary of the State of Mississippi, and of the branch from Moscow to Somerville, and of the depots and depot grounds of said railroad in Tennessee, from Memphis to the Mississippi line, and of all the property of, belonging to and appurtenant to said railroad in the State of Tennessee, and has been holding the same and every part thereof adversely to any and all claims of the holders of the bonds of the State of Tennessee for more than seven years continuously immediately before the 1st day of January, 1879, under deeds in fee-simple as to the realty and judgments of condemnation as to the right of way.

And further saith not.

S. R. CRUSE.

Subscribed and sworn to before me, this March 20th, 1880.

L. W. HUMES,
Special Examiner.

1

Deposition of John S. Claybrooke.

Middle District of Tennessee:

Be it remembered, that on the 23d day of September, 1879, before me, as Examiner appointed by the Circuit Court of the United States for said district, at my office, in the City of Nashville, Tennessee, was produced and came before me John S. Claybrooke, witness on behalf of the defendants, to 2
depose in civil causes depending in the Circuit Court of the United States for the Eastern District of Tennessee, wherein C. A. Stevens is complainant, and the Cincinnati, Cumberland Gap & Charleston R. R. Co., *et al.*, are defendants; same, complainant, and the Knoxville & Kentucky R. R. Co., *et al.*, are defendants; and the same, complainant, and the East Tennessee & Ga. R. R. Co. are defendants (3 cases).

And the said witness, being of lawful age and sound mind, and being by me first duly cautioned and sworn, deposed as follows. Said deposition 3
was taken by consent of counsel for the complainants and the defendants, and in their presence, and by me reduced to writing in their presence, and in the presence of the witness.

Said JOHN S. CLAYBROOKE, being sworn, deposes as follows:

I was president of the Tennessee & Alabama Railroad from 1852 to 1857, and then from 1859 to 1866; during the first period of my presidency, in June or 4
July, 1854, my company received by me from the State of Tennessee 300 bonds of the State, as a loan

5 to the company, under the Act of February 11, 1852, and the amendments thereto, each bond for $1,000, with coupons for the semi-annual interest attached thereto.

These bonds were sold by an agent of the company in New York, under my instructions, and were sold at par, and the proceeds were used in strict accordance with the requirements of the Statute.

I sold some of the bonds issued to my company
6 by the State to Mr. Carter, and also to the Bank of Tennessee, at par. I never instructed or represented to the agent who sold these bonds in New York that there was any lien on the property of the railroad company in favor of the holders of the bonds, but I instructed him to sell them, and the bonds I also sold. I sold them as straight Tennessee bonds. I hereto attach my report of 1855 to the stockholders of my company of the financial operations of 1854 as "Exhibit A" to this, my deposition, and
7 adopt its statements as true.

I am acquainted with the methods of making the semi-annual interest payments on the amount of bonds loaned to us by the State.

We paid in money into the Treasury of the State or the Bank of Tennessee the amount of interest due from us to the State, and we never were required or attempted to adopt any system whereby to secure the applications of these payments to the coupons attached to the bonds loaned to our com-
8 pany.

But whenever we retained bonds issued to us by the State beyond the time when the coupons fell due, we paid this over-due interest by clipping off the coupons and returning them to the State. These were the only instances that we ever attempted to pay the identical coupons of the bonds issued to our company.

I know that we did pay our sinking fund before 9
the war, and we paid it in other bonds than those issued to us, and we never attempted to pay in the identical bonds issued to us by the State; there was no such requirement. We kept a description of the bonds which we paid into the sinking fund, but we did not keep the numbers of the bonds issued to us. We never adopted any system to classify or identify the bonds issued to us by the State for any purpose.

During the time I was president, although we did 10
not pay our interest during the war, no holder of the bonds issued to us ever presented an over-due coupon on any of such bonds to me, or any other agent of the company, and demanded payment of the same.

On *cross-examination*, the witness testified:

That the receipt he gave did contain the numbers of the bonds issued to him, a copy of which is hereto attached and marked as "Exhibit B." 11

I live near Triune, Williamson County. I am not a stockholder in the Decatur Railroad Company. I am not a director of the road, but was a director up to 1870, or until it was leased to the Louisville & Nashville Railroad Co.

I never made any payments of interest on the State bonds myself. They were made by the treasurer, Frank Hardeman. They were paid into the Bank of Tennessee is my recollection. I expect 12
that the treasurer's books are in the hands of Seay.

Whenever the treasurer of our company notified me that the interest was about due I raised the money. Sometimes had to borrow it.

Of all the bonds issued by the State to the Tennessee & Alabama Railroad Company, I sold myself the following amounts: I sold about twenty thousand dollars of said bonds to the Bank of Ten-

13 nessee, at Nashville, and about twenty-five thousand dollars of said bonds to Daniel F. Carter, a citizen and resident of Nashville, Tenn. These are all of the said bonds I sold myself. These were the only sale of said bonds made in Tennessee that I know of. The rest of the bonds were deposited in the Manhattan Bank, in New York. Mr. Morrison, the cashier of the Manhattan Bank, acted as agent of my company in disposing of the bonds deposited in said bank. I do not know that he made any
14 representations concerning the bonds deposited in said bank. One hundred and forty-three of the 300 bonds issued by the State to the Tennessee & Alabama R. R. Co., as stated as above, were reserved by the company to pay a debt due Thompson & Forman for iron rails, manufactured and sold by them to the company. Said firm was doing business in England; and 140 of the 143 bonds were paid to said firm in satisfaction of their debt, at par, some time in 1855. On the bonds so held by the company
15 and not disposed of immediately, the interest was paid by cutting the coupons from each bond fifteen days before said coupons were due. They were cut off by me and handed to our treasurer, who paid them into the Bank of Tennessee.

I was appointed by the Governor as agent for the State in disposing of the bonds issued by the State to the Tennessee & Alabama Railroad Company, but never acted as such agent.

In January, 1855, there was a meeting held in the
16 City of Nashville, of presidents and other officers of the railroad companies in Tennessee, and of companies whose roads lay partly in Tennessee and partly in adjoining States, which were entitled to receive Tennessee State bonds under the Internal Improvement laws of the State.

In this meeting it was determined to appoint three gentlemen, who were to act as agents of the

railroad companies entitled to receive Tennessee 17
State bonds under the Internal Improvement Acts. The gentlemen so designated were myself, Campbell Wallace, then President of the East Tennessee & Georgia Railroad Company, and Sidney Smith, President of the Mobile & Ohio Railroad Company.

These last mentioned gentlemen were also to be appointed and commissioned by the Governor of the State as State agents to dispose of the State bonds under the provisions of the Internal Improvement Acts. I know that the Tennessee & Alabama Rail- 18
road Company ratified the selection of these gentlemen for the above purpose, and gave them a written power of attorney to act as agents for said company, in disposing of said bonds. And I am satisfied that the majority of the railroad companies in the State also ratified said arrangement and appointed said gentlemen as their agents.

The Governor of the State afterwards appointed and commissioned these three gentlemen as State agents, in accordance with arrangement made at 19
Nashville. Mr. Wallace declined to act as agent under either appointment, but Mr. Smith and I did accept the appointments. It was our intention to go to Europe to carry out the objects of our appointment.

Mr. Smith did go to England. I went to New York with the intention of joining him in England, but found it impossible to leave home, and therefore the scheme fell through entirely, and no action was taken in the matter. 20

Sidney Smith is dead, and Campbell Wallace now lives in Atlanta, Georgia, as I am informed.

Frank Hardeman, the former treasurer of the Tennessee and Alabama Railroad Company is dead.

In the report made by me as president of the Tennessee & Alabama Railroad Company in 1856

21 to the stockholders, the following language was used by me:

"In addition to the reasons above suggested in de-
"laying and not pushing forward the enterprise as
"rapidly as we would desire, we might mention
"the great stringency which has prevailed for sev-
"eral years in the monetary affairs of the country,
"which has been especially so in regard to foreign
"capital, upon which we are more or less depend-
22 "ent in finding sale for State bonds and other rail-
"road securities."

Also, on page 10 of the same report, the following language is used:

"The war between Prussia and Allied Powers of
"England and France having ceased, and peace be-
"ing restored, we may look forward as a conse-
"quence to a healthier condition of monetary af-
"fairs, and a larger amount of foreign capital seek-
23 "ing investment in American securities, and there-
"by we will meet with a more ready sale for State
"bonds, and other railroad securities."

In the report of Frank Hardeman, treasurer of the Tennessee and Alabama Railroad Company, to the stockholders, dated August 6th, 1855, under the head of disbursements is the following item:

"State Coupons ..... $4,770 00"

24 In the treasurer's report dated July 26th, 1856, under the head of "Disbursements" is the following item:

"State Bond Interest..... ..... $22,972 50"
"Davidson Bonds..... ..... 549 48"

The county of Davidson took stock in the Tennessee and Alabama Railroad Company to the

amount of $200,000.00, for which the county issued 25
its bonds, payable to and endorsed by the railroad company, upon which bonds the railroad company was liable for the payment of the principal and interest, on failure of Davidson County to pay at maturity, and upon notice to the company.

We never received any such notice.

In the report of said treasurer of the company to the stockholders dated July 31st, 1857, under the head of

"TREASURER. 26

" Dr.		Cr.
	" By Cash, Davidson Bonds,	$ 918 50
	" " State Bonds....	18,180 00

During the year 1856, the Tennessee and Alabama Railroad Company issued about $200,000 of its own bonds, with coupons attached for interest, to secure which the income of the road was pledged, after paying all expenses and prior incumbrances."

In the treasurer's report to the stockholders 27
dated June 30th, 1858, under the head of "Disbursements" are the following items:

" Cash paid State Coupons.....	$20,758 50
" Company "	1,645 41

Below this table are the following items:

" Bonded Debt—State Bonds.....	$771,000 00
" Company "	46,000 00

When the 43 State bonds now due to the com- 28
pany, but not issued, are received, the bonded debt will be as follows:

State Bonds received.....	$771,000 00
" " not "	43,000 00
Company Bonds....	46,000 00
	$860,000 00

29 In the President's report to the stockholders in 1859 is the following:

"BONDED DEBT.

"Tennessee 6 per cent. Coupon Bonds, $846,000.00
"Tennessee and Alabama Railroad
"Bonds endorsed by the State. 14,000.00

Total.....$860,000.00

30 In the Treasurer's report of 1860 is the following:

" *Dr.* TREASURER. *Cr.*

" State Coupons... ...$51,300.12
" Coupon Co. Bonds .. 424.29."

The Tennessee and Alabama Railroad was finished during the year 1860.

The first payment made by the Tennessee and Alabama Railroad Company on its Sinking Fund
31 account was in 1859, at which time it paid $6,000 to the Sinking Fund Commissioners. The reports of the treasurer of the company show that no payment by said company on the Sinking Fund account due on the 1st of January, 1860.

The treasurer's report of the Tennessee and Alabama Railroad Company, made in June, 1861, for the twelve months previous contains the following:

" STATEMENT.

32 "Of the Treasury of the East Tennessee and Ala-
"bama Railroad Company for the year ending June
"30th, 1861.

" *Dr.* TREASURER. *Cr.*

By cash Sinking Fund.....$3,600.00

There were no reports made by the President or

other officers of the company after 1861, until after 33
the war. The above amounts of $6,000 and $3,600 are the only payments shown by the reports of the treasurer of the company to have been made by said company on the Sinking Fund account.

I make this last statement from an examination of the reports of treasurer from the year 1853 up to and including the report for the year ending June 30th, 1861, with the exception of the report of 1854, which I have not examined, but the report of 1862, which is not before me, may include all the Sinking 34
Fund due the State anterior to that period.

In the treasurer's report, dated August 6th, 1866, here exhibited to me is the following:

"In March, 1863, the safes of the company were broken open and some of the books and papers mutilated and destroyed; the loss to the company by the books and papers and notes will be inconsiderable, as they can be restored by diligence and labor in time for the purpose of the 35
company; a small amount of money and two (2) bonds, one State and one Davidson County bond, and some loose coupons were also taken from the safes. The numbers were also lost so, that there are no chances to recover these." The numbers were lost with the bonds and coupons themselves.

I don't suppose that he kept any account of the numbers; I certainly never instructed him to do so. R. H. Bradley, Secretary of the Tennessee & Alabama Railroad Company for some years before the 36
war, is now living at Franklin, Tennessee.

Re-examination:

The bonds that were loaned to my company by the State were payable to bearer, and were not marked or endorsed in my name nor in the name of my company so as to indicate that they had been

loaned to the company, but they were issued and passed to us as bank notes are. Many of the bonds issued to us we did not sell immediately, but retained them longer than the period of the falling due of the first coupons.

The witness being asked the following question: "Whether the language quoted in your answer to "cross examination from your report of 1856, and "which language is as follows; 'State bonds "'and other railroad securities.' Now, did you "mean by this expression to designate or charac- "terize State bonds as railroad securities?"

(Complainant by counsel excepts to the foregoing question, because it seeks to elicit from the witness an answer which will attempt to construe the language used. This is a matter for the Court and not the witness.
S. Watson, sol'r for compl't.)

The witness answers as follows: I meant to designate the State bonds as entirely distinct and different from the railroad securities, by which latter term I meant to include the company bonds and Davidson County bonds that were a subscription to the road.

I am neither a stockholder nor director in the Tennessee and Alabama Railroad Company, but I am an original stockholder and holder of 10 shares in the Nashville & Chattanooga Railroad Company. I understand the 10 shares have been multiplied.

The items quoted in the cross-examination from the Trustees' report of 1865, under the head of "Disbursements," as follows:

State coupons ..... $4,770.00.

I do not know what it means, unless that it designates the amount of the interest paid to the State. I know that we never did pay the coupons attached

to the identical bonds issued to us, except in the in- 41
stances I have already mentioned, where we held the bonds past the time or to the time when a coupon fell due; then we clipped them off and paid them to the Bank of Tennessee on account of our interest. I know that I did not, and none of the company's officers ever did by my instructions, attempt to hunt up and pay the coupons attached to the identical bonds issued to our company in the hands of others. The two following items quoted in the cross-examination from the Treasurer's report 42
of 1856 and 1857, viz.:

DISBURSEMENTS.

Paid to Davidson Bonds... ...	$549.48
By cash.....	918.50

These two items cannot designate payments by our company on Davidson County bonds as debtors, for we never did pay any Davidson County Bond in the place of that county. These two items must 43
mean some disbursements or expense on account of these bonds or some other purpose that I don't know.

The two items in the reports of the Treasurer for 1856-57, headed "Disbursement," viz.:

Paid to State bond interest..	$22,972.00
By cash State bonds.....	18,180.00

are intended to designate the interest paid in 1856- 44
1857 to the Bank of Tennessee as the agent of the State.

I mean by saying it was the agent of the State, that it was the agent of the State to receive the interest on the State bonds due from the company to the State, and as the agent of the State it paid her coupons both here and in New York whenever they fell due.

45 *Re-cross examination:*

When the company held bank notes it was not necessary to use any exertion to dispose of them, because they passed from hand to hand as money.

The resemblance between a bank-note and a Tennessee State bond is that both were payable bearer, and pass by delivery without endorsement and are both numbered.

It was no part of my duty as President of the Company to receive or pay out the funds of the company
46 unless specially instructed by the Board of Directors. In making the explanations I have made in the re-examinations in regard to the items in the Treasurer's report, I do not speak from my own personal knowledge of the transactions, but have given my opinion based upon my knowledge of the general conduct of the affairs of the company and its course of business.

47 (Complainant excepts to all that part of this deposition which gives the witness' opinion in regard to the items in the Treasurer's reports, because it is not the best evidence, and the attempted explanations are based not on personal knowledge, but on inferences drawn by the witness from other facts.

S. WATSON,
Solicitor for Compl'ts.)

48 The income bonds of the Tennessee & Alabama Railroad Company mentioned in the cross-examination, were sold generally by the Treasurer to the citizens of Williamson and adjoining counties. The county bonds issued to the company for stock were principally sold at home; only a few were sold abroad.

Re-examination:

When in my explanations on the re-examination

in chief I state that I know that my company did not 49
pay any Davidson county bonds as debtor in lieu of the county, the fact is stated on my personal knowledge and not as an opinion.

Again, when I state in the re-examination in chief as to the items "State bond interest $22,972.00, By cash State bonds $18,180.00," I state that these items represent interest paid to the State on the amount of bonds lent to us by the State, and do not represent interest paid to the holders of coupons attached to the bonds issued to us, for I can state 50
emphatically that though I presided over the meetings of the board of directors for some ten or twelve years, I never heard it even suggested that it was our duty to pay on the identical bonds issued to our company.

Counsel for the complainants desires the following questions to be asked the witness:

Q. Did you pay the item mentioned in the Treasurer's report of 1855 under the head, "State cou- 51
pons, $4,470.00," or did you pay the amount in the item of "State Bonds interest, $22,972.50?" If so, to whom were the payments made?

A. I did not do it in person. The payments were made to the Bank of Tennessee.

Q. Did you see the payments made?

A. I do not remember to have seen it paid, though I was sometimes with the Treasurer when the payments were made.

3 Q. When you state in the re-examination that 52
these payments were made to the State; do you not mean that they were made to the Bank of Tennessee?

A. I mean that they were made to the Bank of Tennessee as the agent of the State.

And further this deponent saith not.

JOHN S. CLAYBROOKE.

53 After the attorney for the plaintiff had left my office, the said J. S. Claybrooke made the following statement, viz.: "Our company was authorized by act of the Legislature to receive endorsement and guarantee of the State on our own bonds, but the company had it changed so as to make the aid of the State to the company straight Tennessee bonds, and this was done for the reason that the straight Tennessee bonds commanded a better price in the market than bonds of the company endorsed and
54 guaranteed by the State." Which said statement by agreement of counsel for parties plaintiff and defendants may be added to and made a part of this deposition above deposed to.

Attest:

Middle District of Tennessee:

I hereby certify that the foregoing deposition was taken by me and reduced to writing in the presence
55 of the witness and subscribed by him; that I am not of counsel nor attorney for any of the parties to the suits in which said deposition was taken, and that the fee for taking said deposition, amounting to $4.40, has been paid to me by W. Y. C. Humes, attorney for defendants.

Given under my hand at Nashville, in said district, this 23d day of September, 1879.

56

LEWIS T. BAXTER,
Examiner, as aforesaid.

Middle District of Tennessee, ss.:

I, LEWIS T. BAXTER, Clerk of the Circuit Court for the District aforesaid, do certify that the foregoing is a full, true, and perfect copy of a deposi-

tion taken by me as Examiner at Nashville, Tennessee, on the 23d day of September, 1879. 57

Given under my hand and seal of office
[SEAL.] in Nashville, this 25th day of September, 1879.

LEWIS T. BAXTER,
Clerk.

P. 116. BOND BOOK. A.

"Exhibit B." 58

TENNESSEE AND ALABAMA RAILROAD COMPANY.

$200,000.

Received of Andrew Johnson, Governor of the State of Tennessee, two hundred coupon bonds of said State for one thousand dollars each, drawing six per cent. interest, numbered from No. 916 to 1,115 inclusive, dated the 1st day of January, 1854, and falling due on the 1st day of January, 1892, being a part of the first issue, being 300 bonds to 59
said Company under the general Internal Improvement Act passed on the 11th of February, 1852, and the Act amendatory thereof passed, on the 8th February, 1854, the first coupons on said bond falling due on the 1st January, 1855.

Nashville, July 4, 1854.

JOHN S. CLAYBROOKE,
Agent of said T. & A. R. R. Co.
60

I, C. N. GIBBS, Secretary of State of Tennessee, do hereby certify that the foregoing is a copy of a receipt given by John S. Claybrooke, Agent of said T. & A. R. R. Co., for bonds of the State of Tennessee issued to said Company, numbered from 916 to 1,115 inclusive, the original of which is now of record in my office.

61 In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor, affixed [SEAL.] the great seal of the State of Tennessee, at the department in the City of Nashville, this 18th day of July, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE,
62 *Davidson County.*

I, JOHN C. FERRIS, sole presiding Judge of the County Court of said County, do hereby certify that Charles N. Gibbs, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such, and that said attestation is in due form of law and by the proper officer.

63 Given under my hand at office, this 18th day July, 1879.

JOHN C. FERRIS,
County Judge.

STATE OF TENNESSEE,
Davidson County,

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify that John C. Ferris, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing
64 the same, sole presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court at office, this 18th day of July, 1879.

[SEAL.] J. R. McCANN.

EXHIBIT TO DEPOSITION OF JOHN S. 65
CLAYBROOKE.

UNITED STATES OF AMERICA,)
STATE OF TENNESSEE.)

At a meeting of the Board of the Directors of the Railroad Company, held at the office of the Company in on day of 1855, the following preamble and resolutions were adopted, viz.: 66

Whereas, The General Assembly of the State of Tennessee, by act passed the 11th day of February, 1852, entitled, "An Act to establish a system of Internal Improvements in this State," and by an amendatory Act, passed the 8th day of February, 1854, authorized the Governor of said State to issue bonds to various railroad companies, after they had organized and complied with certain conditions specified in said Act and amendments, the proceeds of said bonds being intended for the purchase of 67 iron rails and equipments. And

Whereas, It is very desirable that a permanent value shall be maintained for these securities, and to effect this object a plan has been suggested of having union and concert of action between the organized companies included in said Acts, to whom bonds have been or may be issued, by placing all of said bonds, as received, in one and the same channel of negotiation, to consist of two or more 68 Houses, of first character for financial power and influence, thereby, not only depreciation below their par value, but enabling the negotiating bankers and iron manufacturers to carry their market value permanently above par, and thus secure to this Company a greater amount of revenue from said bonds, and said bankers and iron manufactur-

ers more fully in making advances of money, rails and equipments, upon the most reasonable terms, from time to time, in anticipation of higher rates for said bonds; and whilst the several companies may be preparing successive sections of their roads for the rails, and otherwise complying in good faith with the conditions of the above-mentioned Acts. Therefore, for the consummation of said plan, and to secure to this Company the benefits to result therefrom

Be it Resolved, By the Board of Directors of the Railroad Company (one of the roads specified in said Internal Improvement Acts), that John S. Claybrooke, President of the Tennessee & Alabama Railroad Company, Sidney Smith, President of the Mobile & Ohio Railroad Company, and Campbell Wallace, President of the East Tennessee & Georgia Railroad Company, are hereby constituted and appointed the lawful attorneys of this company (either two of their number acting and concurring), with full power and authority to enter into such agreements and covenants with bankers or iron manufacturers, as may be necessary to effect the objects set forth in the foregoing preamble and these resolutions, resolution, and for that purpose to go to New York, England, or elsewhere, as the joint agents of this company, and other railroad companies of the State of Tennessee, that act with this company in the premises.

Be it further resolved, That the earliest practicable arrangement of this matter by the said attorneys is desired by this company, to whom said attorneys will make a report of their doings, accompanied by copies of all agreements entered into by them on the subject of their agency.

Be it further resolved, That on receipt of said report and agreements, all bonds of the State of Ten-

nessee then held, or that may hereafter be received 73
by their company from the State, shall be placed in the one channel of negotiation, as may be agreed for and as prescribed by said attorneys.

And be it further resroled, That when the joint channel of negotiation shall have been fully organized and established by agreements and covenants, as herein contemplated, the joint agency hereby created therefor shall cease and determine; and this company shall thereafter conduct its business in said channel, in accordance with such agreements 74
and covenants, by its own officers, independently of all other companies.

In witness whereof, the President and Secretary of this Company have hereunto set their names and attached the Company's seal, this day of 1855.

President. 75

Secretary.

REMARKS.

Length of the within-named road in Tennessee, miles.

Terminations at

And connecting the railroad

with the railroad.

Estimated time for drawing bonds for 1st section of 30 miles 185 76

Estimated time for drawing bonds for 2d section of 30 miles 185

Estimated time for drawing bonds for 3d section of 30 miles 185

Estimated time for drawing bonds for last section of 30 miles 185

77 Total amount already drawn, $ { Total amount to be drawn for road and bridges, } $

STATE OF TENNESSEE, *County.* } ss.:

Personally appeared before me, Judge of the Circuit Court of County the within named President, and Secretary of the

78 railroad company, with whom I am personally acquainted, who acknowledged that they signed, sealed and delivered the foregoing power of attorney, as they were legally and officially authorized to do, on the day and year therein mentioned.

Given under my hand and seal, this day of in the year eighteen hundred and fifty-five.

Circuit Judge of *County.*

79

80

Deposition of R. C. Jackson.

1

THE UNITED STATES OF AMERICA, *Eastern District of Tennessee*, } ss.:

Be it remembered, that, on the 30th day of August, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office, in the city of Knoxville, within said district and the Sixth Circuit, was produced, and personally came, R. C. JACKSON, witness on the part and behalf of the defendants in a certain suit now depending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens *et al.*, on behalf of the holders of bonds issued to the Memphis & Charleston R. R. Company, Complainant, and the Memphis & Charleston R. R. Company and the East Tennessee & Virginia & Ga. R. R. Company, Defendant, to depose and the truth to say in said suit; and, thereupon, the said R. C. JACKSON, being of lawful age and sound mind, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows:

2

3

I am 69 years of age, will be 70 next month, and I live in Knox County, in the suburbs of Knoxville; have been living here between nine and ten years; previous to that time I lived forty-two years in Athens, McMinn Co., Tennessee, and previous to that time in Knox County, Tenn.

4

5 I am banking at present; have been since 1872—December; have been president, and am now cashier, of the East Tenn. National Bank; I was connected with the East Tenn. & Ga. Railroad from February or March, 1849—first, as secy. and treasurer, then as secy. and treasurer and supt. of transportation, then as general supt.—until Sept. or Oct., 1863. In the summer or fall of 1875, when the road was surrendered to the government, I was made vice-president; some time after, the time I do not exactly
6 remember, I was made general supt. of the E. T. & Ga. and E. T. & Va. Railroad Companies; after the consolidation of these two roads, which happened prior to 1870, I acted as general superintendent until the fall of 1871. As agent of the railroad company I did receive bonds of the State loaned to the E. T. & Georgia R. R. Company, for building the Chattanooga and Cleveland branch.

This occurred in 1858 or 1859. I sold State bonds lent to this company frequently from 1853 to 1859,
7 and probably to 1860. I never sold any under par, and do not recollect of ever selling any at a premium, unless it was upon getting money advanced without interest upon a promise to deliver bonds to the amount of the loans at fixed future date, which I did in one or two instances which I recollect, and probably several. In selling such bonds I represented them as straight Tennessee State bonds, resting on the faith and credit of the State alone for their payment, and I never said or represented
8 that there was any statutory lien on the property of the railroad in favor of the holder or to secure the bonds. No purchaser ever claimed or intimated to me that any other person was liable for the redemption of the bonds but the State. All the bonds I sold I negotiated or sold in person, and not through a broker or banker. Within my knowledge, in

negotiating the bonds, no representations were 9
made by the company or any of their authorized
agents to the effect that the bonds were liens upon
the road, in favor of the holders of the bonds, and I
never heard of such a thing until within the last
two or three years.

All the State bonds I received during the years
1858 and 1859, all that I sold as above stated from
1853 to 1859 or 1860 were coupon bonds of the State
of Tennessee, payable to blank or bearer. No
system of marking or endorsing these bonds was 10
adopted or resorted to by me or the company, as I
know of, as a means of identifying these bonds as
the bonds loaned by the State to the company. My
recollection of our method of keeping the account
is that when we disposed of a State of Tennessee
bond we credited State bonds and charged cash. I
have no recollection of ever seeing any difference in
the quotation between Tennessee State bonds pre-
vious to the war, and I looked to the quotations
when I was selling State bonds (I mean Ten- 11
nessee six per cent. State bonds—the five per
cents. were, of course, a little lower) in price.
Since the war I have not particularly noticed
the price of State bonds, but think probably there
is a difference between what are called the old
and new series. When I speak of quotation, I mean
the New York quotations of market price. My re-
collection is that the interest account with the State
was kept with the general interest account, and
showed only the amount of interest due the State 12
semi-annually and its payment. We were required
to pay the interest fifteen days before the first of
January and the first of July of each year; we uni-
formly paid it to the Bank of Tennessee as the fiscal
agent of the State, and the bank gave us a receipt
each time as and for the interest so paid to the

13 State. We usually paid the interest in currency; ssmetimes we paid it in currency and coupons. I mean in any coupons then due or overdue of any six per cent. bonds of the State of Tennessee.

We never were required by the State authorities to limit ourselves to, or pay in coupons of, the identical bonds issued to our company, and never attempted to do so, nor to keep any accounts looking to that purpose. So too as to the sinking fund, we were never required to pay, and never made ex-
14 amination as to whether or not we were paying, in the identical State bonds issued to our company, or any other State bonds. In paying interest and Sinking Fund on endorsed bonds we paid the coupons and the bonds issued by the company and endorsed by the State. I never was present but once when the interest was paid to the bank, and this was in Chattanooga in 1862 or 1863; we were careful to ascertain that the bank's accounts showed the same amount of bonds as our books showed, so as
15 to show the true amount of interest due from our Company to the State; and we paid that amount in money, or in money and coupons as the interest due from the Company to the State on account of the debt due for the bonds loaned the Company by the State. When I said that the State would receive coupons due or past due, I meant to include the coupons which would fall due on the first days of January and July, we paying in December and June previous. In paying the interest we made no at-
16 tempt to designate to the bank that the interest so paid should be applied to the payment of any coupons, or applied in any way. We were directed to make our payment of interest to "The Bank of Tennessee," and when we got our receipt from the bank for the interest paid, we considered we had done everything necessary to be done. Not to

my knowledge, and I think I would have known of 17
it if it were done, did either of the companies with which I was connected appoint anyone in Nashville, New York, Philadelphia or elsewhere to pay the identical coupons attached to the bonds issued to these companies by the State. The East Tennessee and Georgia R. R. Company paid its last interest in July, 1863, or the year before or after, and discontinued payment for several years, and neither during that period or since have I ever heard or known of any holder of the coupons attached to the 18
bonds issued to this company, presenting and demanding payment of said coupons of said company. I am a director and stockholder of the E. T., Va. & Ga. R. R. Company, and in no other way connected with it.

The amount of my stock in the said E. T., Va. & Ga. R. R. Company is $10,000 or $11,000, and I have no other interest in it.

Complainants, by their solicitor, except to the 19
whole of the foregoing deposition upon the ground that the questions and answers are wholly irrelevant to the issues raised by the pleadings, and are incompetent.

R. C. JACKSON.

T. S. WEBB,
Solicitor.

20

Deposition of John J. Craig.

THE UNITED STATES OF AMERICA, *Eastern District of Tennessee*, } ss :

Be it remembered, that on the 30th day of August, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office in the city of Knoxville, within said District, in the Sixth Circuit, was produced and personally came John J. Craig, witness on the part and behalf of the defendants, in a certain suit now depending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens *et al.*, on behalf of the holders of bonds issued to the Memphis and Charleston Railroad Company, are complainants, and the Memphis and Charleston Railroad Company, and the East Tenn., Va. & Ga. Railroad Company are defendants, to depose and the truth to say in said suit.

And thereupon the said John J. Craig, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows :

I reside at Canton, Miss., and am here temporarily until I can return in safety ; I reside about 200 miles from Memphis, Tenn.,and about 400 miles from Knoxville, Tenn.

I resided in New York City from 1865 to 1868, and from 1868 to 1877 in Knoxville,Tenn., and from

5 1877 to 1879 in Miss.; I was a banker most of the time when in any business; my house of Craig, Morton & Co., of New York, acted as agents of the Cincinnati, Cumberland Gap & Charleston Railway Company during the years of 1866 and 1867—the time may have embraced from 1865 to the latter part of 1868—and did negotiate the sale of State bonds issued to them by the State. As to the amount of said bonds so sold and negotiated by us, I do not think it was less than one hundred thousand dol-
6 lars nor more than three hundred thousand dollars. The time of selling said bonds was between the years 1865 and the latter part of 1868, as stated above, and the place of sale was Wall street, New York City. I am confident we sold said bonds at not less than 60 cents nor more than 80 cents; they were coupon bonds of the State, payable to bearer; I sold them as straight Tennessee State bonds, and did not represent them as having any lien on any railroad in favor of the bondholders. The question
7 was never mooted as to their being issued to any railroad at all. If it had been believed or represented that there was additional security of any kind it would probably have increased the value of the bonds, but they were sold wholly as State bonds, and their value rested wholly upon the faith of the State in paying them.

I resided in Knoxville about 20 years prior to 1865, and up to that date I was cashier of the Union Bank at Knoxville from the year 1853 to the close
8 of the war. During the time I served as such cashier my opportunities for knowing and learning the value of the bonds were good, as I often had occasion, both in my official and individual capacity, to handle the different series of State bonds, sometimes holding them as collateral for money loaned, and sometimes purchasing them for myself and

friends as investments. During the period I do not 9
recollect of ever having heard of such bonds having any mortgage lien on the railroads in favor of the bondholders. They were sold as straight State bonds. Prior to the war I do not think there was any difference in the market price or value of bonds belonging to the different series of State bonds issued. Since the war there has been a difference in the market price or value of old and new State bonds. By the old bonds I mean or understand those bonds issued previous to the war, and by the 10
new bonds those issued since the war, commencing with Brownlow's administration, but what the difference in price was I do not know; it varied from one to two per cent. The old bonds included the "Hermitage Bonds," "Capital Building Bonds," "Turnpike Stock Bonds," and also the bonds issued to the railroad previous to the war. I have not at this time any connection with or interest in the various railroads of the State, their stocks or securities. 11

The amount of bonds sold by us on account of the Cincinnati, Cumberland Gap and Charleston Railroad Company amounted, as before stated, to not less than one hundred thousand dollars, and may have been as much as five hundred thousand dollars, but it is a matter purely of personal recollection, and therefore not accurate.

Complainants by their solicitor except to the whole of the foregoing deposition, upon the ground 12
that the questions and answers are wholly irrelevant to the issues raised by the pleadings.

T. S. WEBB,
Sol'r, &c.

And further this deponent saith not.

JNO. J. CRAIG.

1

Deposition of Major Campbell Wallace.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of the holders of bonds issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY, *vs.* THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*	No. In Equity.

2

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

3

CALVIN AMORY STEVENS, on behalf of holders of bonds issued to the EAST TENN. & GEORGIA RAILROAD COMPANY, *vs.* THE EAST TENN., VIRGINIA & GEORGIA RAILROAD COMPANY *et al.*	No. 662. In Equity.

4

816
820

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of holders of bonds issued to the EAST TENN. & VIRGINIA RAILROAD COMPANY,

vs.

THE EAST TENN., VIRGINIA & GEORGIA RAILROAD COMPANY *et al.*

No. 663. In Equity.

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of holders of bonds issued to the CINCINNATI, CUMBERLAND GAP AND CHARLESTON R. R. Co.,

vs.

THE CINCINNATI, CUMBERLAND GAP & CHARLESTON R. R'D Co. *et al.*

No. 664. In Equity.

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of the holders of bonds issued to the KNOXVILLE & KENTUCKY RAILROAD COMPANY,

vs.

THE KNOXVILLE & KENTUCKY RAILROAD COMPANY.

No. 665.

CIRCUIT COURT OF U. S.,

MIDDLE DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of bonds issued to the NASHVILLE & CHATTANOOGA R. R'D COMPANY,

vs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, *et al.*

In Equity.

CALVIN A. STEVENS, on behalf of holders of bonds issued to the NASHVILLE & NORTHWESTERN R. R. Co.,

vs.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY *et al.*

In Equity.

13

CALVIN A. STEVENS, on behalf of holders of bonds issued to MCMINNVILLE & MANCHESTER R. R'D CO.,

vs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY *et al.*

} In Equity.

14

CALVIN A. STEVENS, on behalf of holders of Bonds issued to the WINCHESTER AND ALABAMA RAILROAD COMPANY,

vs.

THE NASHVILLLE, CHATTANOOGA
15 AND ST. LOUIS RAILWAY *et al.*

} In Equity.

The deposition of MAJOR CAMPBELL WALLACE, President of the Merchants' Bank of Atlanta, taken on behalf of the defendants, at the Merchants' Bank in Atlanta, I. C. D. Woodson, a notary public, for the County of Fulton, State of Georgia, and in the presence of W. Y. C. Humes, solicitor of the defendant, on the 2d day of October, 1879.

16 The said witness CAMPBELL WALLACE, being first duly sworn, deposes and says: My name is Campbell Wallace; my age is seventy-three years; I am a resident citizen of the State of Georgia, and have been for fourteen years last past. I am now and have been for more than six years the President of the Merchants' Bank of Atlanta, actively employed in the duties of that office. I have no connection

official or other, with any of the railroad companies of Tennessee, nor am I at all interested in any of their stock or securities, bonds or assets, nor any bonds issued by any of them or by the State of Tennessee for any purpose, except ten shares of stock of the Knoxville and Ohio Railroad Company. Nor am I interested in any, the smallest degree, in the issue of any of these suits. I was a citizen and resident of East Tennessee all my life until my removal to Georgia in 1865. I was a director in the East Tennessee and Georgia Railroad Company prior to and up to 1853, when I was elected its President, and from 1853 to July, 1865, gave my time and attention almost entirely to the duties of that office, and the interest of that road. I was its chief executive officer, and financial agent. Under my direction and immediate control all its fiscal operations, transactions and contracts were made, consummated, and performed, from 1853 to 1865. I personally know that the State of Tennessee did lend its endorsement and guarantee on and to the bonds of several railroad companies, including bonds of the Nashville and Chattanooga Railroad Company, of the East Tennessee and Virginia Railroad Company and of the East Tennessee and Georgia Railroad. And these company bonds were secured by first liens and mortgages on the railroad companies issuing them in addition to the endorsement and guarantee of the State. However, the 150 bonds of the Nashville and Chattanooga Railroad Company, issued by that company with the endorsement and guarantee of the State to aid in the construction of the Chattanooga Branch of the East Tennessee and Georgia Railroad Company were secured by a first mortgage on the said Chattanooga Branch These bonds of various companies, though secured by the endorsement and guarantee of the State, as well as by first liens and mortgages

on the property of the roads issuing them, did not sell for as high prices as straight Tennessee State bonds bearing the same rate of interest and for whatever purpose issued, whether for railroads or purely State purposes.

Before I was elected President, the East Tennessee and Georgia Railroad Company had received from the State of Tennessee State bonds payable to bearer, with coupons attached, payable semi-annually, to the amount of $350,000 as a loan. After I became its President, and up to July, 1861, the East Tennessee and Georgia Railroad Company received in addition to the above, as a State loan bonds to the amount of $812,000, of the same character and description as the above under the general Internal Improvement Act of February 11th, 1852, Ch. 151, and the Acts amendatory thereof; so that our whole debt to the State for six per cent. State bonds lent to us amounted on the 30th of June, 1860 to, and appears in the report of that date as follows:

State loan, . . . $1,162,000

The account as to Company bonds of the East Tennessee and Georgia Railroad Co., endorsed by the State is set down:

Endorsed bonds, . . . $150,000

In our entire dealings with the State bonds issued to our road, we regarded and treated them as the obligations of the State of Tennessee alone, and we treated, construed, and regarded our obligation (arising from the loan of said State bonds to us by the State), as a debt due from the railroad company to the State alone for the amount of the bonds so lent to the company, at their nominal or face value, and they were the equivalent of money for State of Tennessee six per cent. bonds were then worth and selling at par, as the State had never defaulted in the payment of the interest on her bonds at matur-

ity. The $812,000 of State six per cent. coupon 25
bonds payable to bearer issued to said Company during my Presidency were disposed of under my direction by the Treasurer, R. C. Jackson, and by me. They were sold as required by the law, and their proceeds applied strictly in accordance with its provisions. I sold them principally in Tennessee. I never thought of, nor represented, nor directed any one to represent to any buyer that the payment of the bonds to the holder was secured by any obligation of the company or by any lien on the 26
property of the company in favor of the bondholders; I did not think so myself, and never heard it suggested or claimed by any one during the period we were receiving and selling them, nor did I ever hear of such a claim by any one until within the last two years. When we received the several instalments of these State bonds from the State as loans, no State officer then or at any other time instructed, directed or requested us to adopt any system or mode of identification, marking, 27
or noting the particular bonds issued to us, nor even to preserve the numbers, and we did not ourselves adopt any such system or mode, but we simply credited to "State loan" the amount issued at the time, and on sale of them charged to cash. In paying our semi-annual interest to the State on the amount of her loan to us we did not attempt to have the payments so made applied to the particular coupons attached to the bonds issued to us; nor did we attempt to hunt up said coupons to 28
pay them ourselves; nor did we ever entertain the idea that any holder of State bonds was a creditor of the company. On the 15th of December, and on the 15th of June of each year, we paid the semi-annual installment of interest due to the State from our company on the amount of bonds previously loaned to our company by the State. We paid this

29 interest to the Bank of Tennessee, as the general fiscal agent of the State, and we paid it indiscriminately in money, or any six per cent. coupons from any State bonds, whether issued to railroads or for any purely State purpose. Having paid our interest to the State, and received the receipt for it from the bank, we felt no further concern whether the State paid her coupons when they matured fifteen days afterwards on the bonds issued to us or not; and we never sought or attempted to get the cou-
30 pons attached to the bonds issued to our company, nor could we have identified them. But as to the bonds of our company endorsed by the State we did seek and did pay the coupons on them as our own liability; they amounted to $150,000.00 as at first issued, and were issued under a special act for the benefit of our branch road from Cleveland to Chattanooga. In keeping the account and paying the interest due from our company for the amount of bonds lent by the State to our company, we re-
31 garded and treated it as interest due to the State from our company on the amount of loan, and not as interest due from the company to the holders of the bonds issued to our company.

If I had regarded or thought our company was liable to the holders of the coupons and bonds of the State lent to us, we would certainly, for our own protection, have pursued the same course as to them, both in regard to the interest coupons and the bonds, that we did pursue in regard to our
32 bonds endorsed by the State.

As to these latter bonds, we carefully and regularly, every six months, paid the interest coupons attached to them as our primary obligations; and we saw to it that the State authorities, the Sinking Fund Commissioners, applied each annual payment to the extinguishment of our own bonds endorsed by the State. We bought any six per cent. cou-

pons of State bonds which were offered to us, and took them sometimes to accommodate our friends giving them the money for them; and coupons so bought, and taken, we used to pay our interest to the State, no matter from what State bonds they were taken, so they were from Tennessee six per cent. bonds, and so we satisfied the State authorities that we got them before or on the 15th day of December or 15th day of June, the dates of our payments. We paid our interest promptly and regularly to the State every six months before the war, and up to January 1st, 1863; but we afterwards fell behind in paying our interest to the State as follows, as I reported to the stockholders:

"The interest on State loan was paid up to 1st of January, 1863, and the balance of $155,550.00 was not paid to the State, when it fell due in 1863, 1864, and to 1st of July, 1865.

Although the State defaulted in the payment of all her interest coupons on all her bonds during the war, and although this unpaid interest of our company to the State, $155,550.00, remained unpaid for several years, yet no holders of the coupons, or of any interest coupon attached to the bonds issued to our said company ever presented such coupons or coupon to our company for payment, or ever demanded or claimed payment of such coupons or coupon from our company within my knowledge or information. In making the successive annual payments to the State of the sums produced by setting apart the percentum on the amount of bonds issued to our company, as required by the 7th section of the Act of February 11th, 1852, ch. 151, and also under the amendments thereto, we construed and treated them, and had them receipted for by the State officials as credits on our company's debt to the State for the State loan, and as payments in absolute discharge of that much of that indebted-

ness. The mode of the first act was to raise the sinking fund by preserving the State bonds after they had been assigned to the Governor and paid into the Treasury of the State by the company, and reinvesting the interest accruing on them in other State bonds in order to accumulate before the State bonds fell due a fund for the State sufficient to enable her to pay her bonds. This clause of the first act contemplated that, although these annual installments were absolute payments by the company on their debt to the State, and receipted for as such when made, yet the company should continue to pay to the State the interest on the amount of bonds originally loaned to it, and these annual payments, though absolute when made, were to be credited as of the date when they and their accumulations should equal the debt due from the company to the State for the amount of State bonds lent to the company.

Seeing the management of this scheme, I detected that it was liable to confusion in the keeping of the accounts at Nashville of the payments of bonds and reinvestment of interests on bonds paid in by so many companies—some twenty to twenty-five; and more especially as these matters were managed by political appointees, changed every two years with the Governor's election, and not by business men selected and retained for their financial skill. By this confusion we were in peril of losing some of our credits for bonds paid in and thus have to pay again the credit so lost. For these reasons I, as President of the East Tennessee & Georgia Railroad Company, solicited and induced the Legislature, having John Marshall, as President of the Tennessee & Alabama Railroad Company, to help me, to increase the annual payments required to sums adequate to liquidate the debts of the several companies to the State, before the State bonds should fall due, without the

compeer mode above set forth, of keeping the 41
bonds, setting aside the accruing interest, reinvesting it, and thus accumulating the fund for the State.

The Legislature did increase the annual payments of percentage to 2½ per centum on the amount of bonds loaned to the respective companies, and did require the bonds in which these annual bonds were to be made to be cancelled when paid in, instead of being kept, and did allow the payments to be credited as of the dates they were actually made 42
instead of as of the date the accumulated fund should equal the Company's debt for the amount of State bonds loaned to it. The Legislature very willingly and readily adopted this measure because it increased the amount of State bonds annually to be paid by all the railroad companies to the State, and would thus accomplish the purpose of the original act of retiring by or before the maturity of the bonds as many of them as the State had issued to railroad companies. 43

The officers of some of the railroad companies were opposed to this increase of annual payments; but I, as President of the East Tennessee & Georgia Railroad Company, not only solicited and favored its adoption, but after its adoption I increased our payments beyond the requirements of the law. As evidence of this, I here, as part of my deposition, quote the following brief and truthful report on this subject made by me to the stockholders on the 3d of September, 1862, viz: 44

"The Internal Improvement law requires 2½ per cent. to be paid annually on your funded debt, which is ample to liquidate your entire indebtedness to the State before it matures.

In consequence of the distracted condition of the country. the Legislature suspended the payment of this sinking fund, but we have thought it prudent

45 and to your interest to continue to pay not only the 2½ per cent., but as much more as possible, and your company are now some three years in advance of any legitimate call that can be made for payment of sinking fund. Your funded debt at present stands as follows:

Original State loans		$1,162,000
Paid and cancelled		125,000
		$1,037,000
46 Bonds endorsed by State	$150,000	
Paid and cancelled	35,000	
	$115,000	
Mortgage bonds		$ 800,000
Paid and cancelled		154,000
		$ 646,000
Total		$1,798,000."

47 The $800,000.00 of mortgage bonds were bonds of the company, with which the State had nothing to do.

I herewith file as exhibits to my deposition, copies of the receipts of the State officers for the $125,000.00 paid to the State in its six per cent bonds on the State loan to our company.

It will be observed that the $14,000.00 and $2,000.00 were paid in prior to 1860, and these re-
48 ceipts were acknowledgments of the cancellation of the bonds, under the Act of 1859-60, Ch. 90, previously paid in. The receipts, as to the endorsed bonds, show that we did not attempt to pay these endorsed bond debts in any but the identical endorsed bonds; while the State loan we paid in any six per cent. bonds of the State without reference to what they were issued for, whether for railroads or

any purely State purpose. The Exhibits are marked 49
Nos. 1, 2, 3, 4, 5, 6.

The Government of the United States, by its military authorities, and for military purposes, occupied and operated the road for about three years during the war, to the exclusion of the company, its agents and officers, and without compensation to the company, so far as I know. During the war the interest falling due, and unpaid by the company on its debt to the State for the State loan, on its bonds endorsed by the State, and on the 50
other outstanding bonds of the company, accumulated to the amounts following:

On State loan	$155,550 00
On bonds endorsed by the State.....	21,030 00
On mortgage bonds.....	98,910 00
Total July 1st, 1865..	$275,490 00

After we made payments annually and semi-an- 51
nually of money or bonds to the State, under the Sinking Fund provisions of the 7th Section of the Act of 1852, Ch. 151, these funds thus paid to the State were no longer subject to or controlled by the companies, but were managed and controiled by the officers and agents of the State, as belonging to the State, and without accountability to the railroad companies. The practical financial effect of our annual payments to the State, under the Sinking Fund provisions, up to the 4th day of June, 1862, 52
when the last payment was made under my presidency, was the discharge of $125,000.00 of our State loan debt to the State, and the retiring of that amount of State bonds that had been issued for any and all purposes, as we had bought any State six per cent. bonds we found on the market without reference to the purpose for which they were issued;

and as they all bore the same price, whether issued to railroads or for any other purely State purpose.

The annual payments by the other railroad companies produced a like effect to the extent of those payments. If this scheme of the original act had been carried out, unobstructed by the war, or other adverse events, the final result would have been that the railroad companies, before the maturity of the bonds lent to them, respectively, would have paid the full amount of their respective debts to the State for the State loans to them, by retiring to the State that amount of the State's own six per cent. bonds.

As the 7th section allowed us to buy and pay into the State Treasury, and we did buy and pay in any Tennessee six per cent. bonds without regard as to whether issued as loans to railroads or for any purely State purpose, many State bonds issued for other purposes that as loans to railroads, no doubt were retired and would necessarily have been so retired, leaving a like amount of the bonds issued to railroads outstanding, and wholly unprovided for, except so far as the good faith and credit of the State secured them. That thus, many bonds issued to the railroads would have been left outstanding, was a result following necessarily from that provision or stipulation of the 7th section of the first act, allowing the railroad companies to make their annual payments by buying any bonds of the State of Tennessee, and paying them into the Treasury of the State after assigning them to the Governor. Bonds so paid in were a perfect security to the State for the debt of the railroads to her, but were necessarily unavailable to a holder of outstanding State bonds. As to the State, the operation of this provision if carried out was to secure to her the payment of the full amount of the State loans to the railroads; and during the process and periods of payment to maintain all her six per cent. bonds

issued for any purpose at one uniform price, and 57
this was the actual fact, uniformity of prices as to
all her six per cent. bonds. As to the railroads, the
operation of this stipulation or provision was to se-
cure to each of them the privilege of paying their
State loan debt in any State six per cent. bonds,
which they could do with greater facility and cer-
tainty than if required to hunt up the particular
bonds issued to them. As to the bonds themselves
the operation of this provision was to benefit them,
by giving them all the same chance to be retired by 58
any railroad purchase, and by increasing the State's
ability to pay as her debt was diminished. When
I made the last payment on the 4th of June, 1862,
of $100,000 in State bonds, the payments of the East
Tennessee and Georgia Railroad Company, were
three years ahead of the requirements of the sinking
fund provision, although they, the sinking fund
requirements, were suspended by statute, and had
we not been prevented by the disasters of the war,
taking away our road and destroying our income, 59
I would have continued to make the payments as
fast and large as our means would have enabled us,
until we had paid the State loan debt in full to the
State in her own bonds or money, and extinguished
our liability unless otherwise ordered by the direc-
tors. The only possible way the interest accruing on
the State bonds paid into the State Treasury annually
by the railroads, could be made available and used
as a sinking fund, was for the State through her own
officers voluntarily to set aside so much money 60
from the funds in her Treasury; just as she would
so much of her taxes collected, or any other rev-
enues for a defined State purpose; as to meet the
expenses of her Public School, or any other State
obligation. The practical management was of her
revenues as a sinking fund to meet her own obliga-
tions.

CAMPBELL WALLACE.

61 I, C. D. WOODSON, a notary public in and for the city of Atlanta, in the State of Georgia, hereby certify that on the second and third days of October, 1879, in the office of the Merchants' Bank of Atlanta, and in said city of Atlanta, I was attended by the counsel, W. Y. C. Humes, for the defendants, and the witness aforesaid; that the said witness was duly sworn and examined, and this deposition was reduced to writing by me, and read by the witness, and by himself subscribed in my
62 presence, and that Exhibits Nos. 1, 2, 3, 4, 5, 6, were introduced in said cause during the taking of said deposition.

Given under my hand and seal of office, this 3d day of October, 1879.

C. D. WOODSON,
Notary Public,
Fulton County, Ga.

(Copy.)

63 EXHIBIT NO. 1 TO CAMPBELL WALLACE'S DEPOSITION.

No. 2. NASHVILLE, TENN., June 30th, 1860.

Received from the East Tennessee & Georgia R. R. Co., fifteen East Tennessee & Georgia R. R. Co.'s endorsed bonds, each for one thousand dollars, and numbered as follows: Nos. 21, 34, 39, 56, 60, 61, 62, 141, 24, 52, 22, 25, 150, 55 and 146.

These bonds are received on account of the semi-
64 annual payment due by said company as Sinking Fund, being 10,875 dollars, due on the 1st day of April, 1860, and the balance of the fifteen bonds being an advance payment due 1st October, 1860.

ISHAM G. HARRIS, *Governor.*
J. T. DUNLAP, *Comptroller.*
} *Com'rs of Sinking Fund.*

Bonds. 65

(Copy.)

EXHIBIT NO. 2 TO CAMPBELL WALLACE'S DEPOSITION.

No. 4. NASHVILLE, TENN., Dec. 22d, 1860.

Received from the East Tennessee & Georgia R. R. Co., seven endorsed bonds, each for one thousand dollars, and numbered as follows: 134, 132, 131, 133, 135, 10, 89. These bonds are received 66
on account of the semi-annual payment due by said company as Sinking Fund on the 1st day of October, 1860, and returned to said company after cancellation, under the act of 1859-60, ch. 93, section 2.

J. T. DUNLAP, *Comptroller.*
G. P. SMITH. *Pres't Bank of Tenn.*
} *Com'rs of Sinking Fund.*

7 Bonds. 67

(Copy.)

EXHIBIT No. 3 TO CAMPBELL WALLACE'S DEPOSITION.

No. 12. NASHVILLE, Tenn., Feby. 5th, 1861.

Received from the East Tenn. and Georgia R. Rd. Two Tennessee State Six per cent. Bonds, each for one thousand dollars, and numbered as follows: Nos. 1,127 and 10,629, reinvestment. These bonds are received on account of the semi-annual of in- 68
terest of the old sink. fund.

J. T. DUNLAP, *Comptroller.*
G. P. SMITH, *Prest. Bank of Tenn.*
} *Comrs. of Sinking Fund.*

2 Bonds.

69 (Copy.)

EXHIBIT No. 4 TO CAMPBELL WALLACE'S DEPOSITION.

NASHVILLE, Tenn., 2d Nov., 1861.

The Sinking Fund Commissioners have this day cancelled fourteen straight six per cent. coupon bonds of the State of Tennessee, each for one thousand dollars, belonging to the sinking fund of the
70 East Tenn. and Georgia R. Rd. Company, and placed the amount, fourteen thousand dollars, to the credit of said East Tenn. and Georgia R. Rd. Co. The above fourteen bonds thus cancelled were put into the sinking fund of the East Tenn. and Geo. R. Rd. Co. in place of twelve East Tenn. and Va. R. Rd. Co.'s endorsed bonds, and two Nash. and Chatta. R. Rd. Co.'s endorsed bonds previously purchased for account of East Tenn. and Ga. R. Rd. Co.'s sinking fund.

71 G. C. TORBETT,
J. T. DUNLAP,
Sinking Fund Commissioners.

(Copy.)

EXHIBIT No. 5 TO CAMPBELL WALLACE'S DEPOSITION.

72 NASHVILLE, Tenn., Nov. 20, 1861.

Received from the East Tennessee and Georgia Railroad Company, nine Tennessee State six per cent. bonds, each for one thousand dollars, and numbered as follows: Nos. 4,333, 4,334, 5,851, 9,584, 9,086, 7,115, 10,415, 4,332, 2,068. These bonds are received on account of the payment due by said company as sinking fund, when next called

for, and are now cancelled under act of 1859–60, ch. 93. 73

ISHAM G. HARRIS, *Governor*,
J. T. DUNLAP, *Comptroller*,
G. C. TORBETT, *Prest. Bank of Tenn.*
} *Comr. of Sinking Fund.*

9 Bonds.

74

(Copy.)

EXHIBIT No. 6 TO CAMPBELL WALLACE'S DEPOSITION.

CHATTANOOGA, TENN., June 4th, 1862.

Received from the East Tenn. & Ga. Railroad Co. one hundred Tennessee six per cent. bonds, each for one thousand dollars.

These bonds are received on account of the payment due by said company as sinking fund, and are now cancelled under Act of 1859–60, Ch. 93. 75

ISHAM G. HARRIS,
Governor.

G. C. TORBETT,
Pres't Bank of Tenn.

100 Bonds.

76

CHATTANOOGA, June 4th, 1862.

Received from the East Tenn. & Ga. R. Rd. Company eleven endorsed bonds, each for one thousand dollars, and numbered as follows: 42, 43, 59, 79, 49, 45, 50, 100, 51, 46 and 27. These bonds are received on account of the payment due by said company as sinking fund, and after cancellation re-

77 turned to said company, under Act of 1859–60, Ch. 93, Sec. 2.

ISHAM G. HARRIS,
Governor.

G. C. TORBETT,
Pres't Bank of Tennessee.

I, G. W. Blackburn, certify the above is a true copy of the original, on file in my office.

78 In witness whereof, I have hereunto set my hand and seal of office, this 1st day of February, 1868.

G. W. BLACKBURN,
Compt.

79

80

1

Deposition of Neill S. Brown.

Deposition of Neill S. Brown, witness on behalf of the defendants in the foregoing cases.

The said witness, being duly cautioned and sworn, deposes and says.

My name is Neill S. Brown; am aged 69 years, and am a practicing attorney and solicitor at Nash- 2
ville, Tennessee.

To interrogatory propounded he answers and says, that he was twice a member of the Legislature of the State, was twice or three times elected, and was once Governor of the State.

I bought among the first issue of the bonds issued for the building of the capitol, say in 1849 or thereabouts; I think I bought about $4,000 in such bonds and paid par therefor; I kept them until about the year 1854; I then invested them in a private enterprise at par; I then received from the enterprise my
interest therein in bonds issued by the State of Ten- 3
nessee for agricultural purposes, *at par*, and I afterwards sold said Agricultural Bonds in 1857 or 1858 *at par*.

The prices mentioned as paid for and received for said bonds was the market or ruling price for all bonds issued by the State at the times mentioned, and it continued so for sometime afterwards, and had been at all times from the first issuance down until the approaching rumors of war.

I have no interest whatever in any bond issued 4
by the State of Tennessee; I do own one hundred

5 dollars in stock of the East Tennessee and Georgia Railroad, besides which I have no interest in any bond or stock of any railroad company.

I have noticed the quotations of bonds of the State of Tennessee since the war, and do not remember that any difference was made in the quoted market price of the bonds issued to the railroads under the Internal Improvement laws, and other bonds issued by the State for other purposes.

6 (Complainant, by solicitor, excepts to the competency of this evidence, because irrelevant to the issue ; and especially to the last paragraph, because purely hearsay and not the best evidence.

S. WATSON,
Solicitor for the Compl't.)

The State of Tennessee owned the Bank of Tennessee, and made it the fiscal agent of the State ; it was so called and so recognized ; all the revenues of
7 the State were deposited with the Bank of every conceivable kind, and it (the bank) paid all the obligations of the State ; sometimes the balance was one way and sometimes the other.

Cross-examination :

The Union Bank of Tennessee was the fiscal agent of the State before the Bank of Tennessee was created. I never had any dealings with bonds ex-
8 cept as above stated.

And further deponent saith not.

NEILL S. BROWN.

Subscribed and sworn to before me, this 2d September, 1879.

E. R. CAMPBELL,
Examiner.

Deposition of Columbus Powell.

CALVIN AMORY STEVENS

vs.

MEMPHIS and CHARLESTON R. R. Co., and others.

Taken Sept. 26th. 1879, at Knoxville.

I am about fifty years of age, and reside in Knoxville, Tennessee. I lived in New York City for four years after the war, from 1865 to 1869. While living in New York City I was a member of the firm of C. Powell, Greene & Co., Bankers and Commission Merchants. My firm sold a large number of the bonds of the State of Tennessee 6 per cent. coupon bonds for account of the East Tennessee and Virginia, Rogersville and Jefferson, Knoxville and Kentucky, now Knoxville and Ohio, Knoxville and Charleston and Mississippi Central Railroad Companies; and in addition to said companies, we sold bonds for individuals and bankers; said bonds were mainly sold in the Board of Brokers, through a broker to a member or members of that board; occasional sales were made to individuals privately. The mode of selling bonds through the Board of Brokers in New York, was and is as follows: whenever we had State bonds for sale on behalf of our customers, whether railroads, private individuals or bankers, we gave an order to our broker to sell Tennessee bonds, 6 per cent. coupon bonds payable to bearer; we did not give him any representation

that the bonds were issued to railroads or for what purpose, nor did we ever give him numbers of the bonds; our broker would offer said bonds when Tennessee bonds was called on the list of stocks and bonds by the President of the Board, and receive such bids from other members of the board as he was willing to accept, reporting the sales to our office when we could deliver according to contract, as follows, if for cash, deliverable on the day of sale, if on time, deliverable on the day fixed in the contract, so that neither the broker who bought nor the person for whom he bought, ever knew any thing in regard to the bonds, except that they were Tennessee six per cent. bonds, did not even know their numbers, or for what purpose they were issued, nor did he even see the bonds until they were delivered in final consummation of the sale. Our broker who sold the bonds did not even know anything about them except that they were Tennessee 6 per cents. And the bonds although numbered as all Tennessee bonds were, had nothing on them to indicate or show for what purpose they were issued, or to what railroad, except that they specified under what act of the Legislature they were issued. I mean in brief, that the bonds were sold as straight Tennessee State bonds, and that there was no representation, claim or suggestion made by the seller or buyer that they carried any lien on the property of the railroad company in favor of the bondholders. Bonds were frequently interchanged and loaned between the railroads, so that I myself did not know to what railroad the bonds were issued which I was selling.

In all my New York experience, and I suppose I was one of the largest sellers of Tennessee bonds for account of railroads and others, I never once heard the question raised that the bondholders could look to, or had any lien upon the railroad property be-

longing to the company to which the bond was 9
issued. Had frequent conversations with holders of old and new bonds, who would consult me about the payment of interest on the bonds by the State, and in all these conversations the point discussed was what the sense of the people of the State of Tennessee as to the payment of the interest on said bonds, and never heard any suggestion or allusion to a claim of a lien on the property of the railroad companies of the State in favor of the bond-holder. 10

I do not think that two millions of dollars is an overestimate, but rather an under estimate, of the amount of Tennessee State bonds we sold while in business in New York City. I mean Tennessee sixes. The bonds were issued to the railroad companies by the State just as they applied for them, taking up the number at the number last issued. There was no mode of classification as to numbers of bonds adopted by the State authorities in issuing them so as to identify and distinguish the bonds 11
issued to railroads, or any particular railroad, from the bonds issued by the State for any other purpose than for the railroads. In other words, there was no set of numbers for each particular railroad, or for all the railroads, but there was one common series of numbers for all purposes; therefore it was impossible for an outsider, seller or broker in New York, to identify any Tennessee State bond coming to him there as a bond issued in favor of any railroad.

There was no difference in the price of Tennessee 12
State bonds, as sold on the same day, either for the East Tenn. and Virginia Railroad, a road of 130 miles in length, solvent, completed, and with full connections, and the "Knoxville and Kentucky Railroad," 40 miles, and incomplete and without connections, "The Rogersville and Jefferson Railroad," 16 miles in length, and incomplete, and the

"Knoxville and Charleston Railroad," 16 miles in length and incomplete, the three latter all being insolvent; nor the Mississippi Central Railroad, complete and with full connections, running 250 miles across the State of Tennessee.

I have no connection with nor interest in any railroad of the State, nor their stocks or securities.

It was a well known fact that these short insolvent railroads received twice as many bonds from the State per mile as the solvent roads, and yet the bonds on the market sold at the same price, as my books will show; and I give the following illustrations of actual sales from my books: we sold through our broker, in the Board of Brokers in New York, on Sept. 20, 1866, $80,000 of Tennessee bonds at 71⅜, 72¾, and 73, and we delivered in consummation of these sales bonds indiscriminately from the following roads, "E. T. & Va.," "Knoxville and Kentucky," and "Rogersville and Jefferson." This is only an illustration of what frequently occurred, and in one instance sold in the same manner $100,000, in which the bonds of the Mississippi Central Railroad were delivered in common with the bonds of the railroads above mentioned and at the same price.

The reason for the name of Old and New Tennessee sixes was on account of the old carrying with them five past due coupons, when the new sixes were placed on the call of the stock board; that custom was continued after the coupons were paid or funded by the State, when the difference in the market value of the old and new was reduced to a merely nominal difference.

All six per cent. State bonds issued prior to 1860, whether to build the Capitol, buy the Hermitage, pay for the State's stock in banks or turnpikes, or to railroads under the Improvement Acts, or for any other purpose, were called old Tennessee sixes,

and without regard to what they were issued for, was a good delivery in the New York market, and at the same price. 17

Before the war the bonds issued by the railroad companies of Tennessee, with a first mortgage lien on the property of the roads and endorsed by the State, did not bring as high a price in the market as straight State sixes issued to aid the railroads or other purely State purposes. The reason for this is that the credit of the State was so high as through her fiscal agent, the Bank of Tennessee, she promptly paid her interest every six months in New York City. No doubt or apprehension was either felt or expressed as to her ability and promptness to pay her interest; while in the vicissitudes of railroad projects there was always doubt, and no such confidence did or could exist, and notwithstanding the State endorsement, it was secondary and it was felt that in case of default on part of the railroads, the State would delay until the lien on the railroad property in favor of the bondholders was enforced and exhausted before she would discharge her secondary liability. 18 19

Wm. G. Swan and I, as directors and fiscal agents of the Knoxville and Kentucky Railroad, went to New York in 1860, and sold some $30,000 to $40,000 of the first State bonds issued to that company; we sold them through brokers on the public market as straight Tennessee bonds; no representations were made by us, nor any inquiries or questions raised as to there being any lien on the railroad in favor of the holders of the bonds sold by us. We never dreamed that such a fact would have enhanced or affected beneficially the market. 20

And further this deponent sayeth not.

COLUMBUS POWELL.

Deposition of Albert Roberts.

Deposition of Albert Roberts, a witness for the defendants.

The witness being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says, as follows :

My name is Albert Roberts, aged 44 years ; I was one of the publishers of the Republican Banner, a newspaper published in the City of Nashville, Tenn., in the year 1871, and know that notices in the case of the State of Tennessee *v.* The Edgefield and Kentucky Railroad Company *et al.*, as shown in Exhibits A and B, hereto attached, and made a part hereof, were published in that paper as follows :

Exhibit A was inserted in the issue of January 22, 1871, and was continued therein for four weeks, and until and including Feb. 12, 1871 ; and Exhibit B was inserted in the issue of the 16th April, 1871, and was continued for four weeks and until the 8th day of May, 1871.

I have to-day compared the notices with those published in the paper.

ALBERT ROBERTS.

Subscribed and sworn to before me, this 2d September, 1879.

E. R. CAMPBELL,
Examiner.

Exhibits A and B same as those attached to deposition of Ira P. Jones.

Deposition of D. B. Cliffe.

The deposition of D. B. CLIFFE, taken on behalf of the defendants, on notice hereto attached in the case of Calvin Amory Stevens *v.* The Nashville and Northwestern Railroad Co. *et al.* 1

The witness, said D. B. CLIFFE. being duly cautioned and sworn, deposed as follows:

1st interrogatory propounded by Ed. H. East and R. McP. Smith, attorneys for the defendants:

My name is D. B. Cliff; occupation, physician; residence, Franklin, Tennessee; age 56 years. I was appointed Receiver of the Nashville and Northwestern Railroad by Governor W. G. Brownlow, and took charge of said road on the 14th July, 1868, and continued as such Receiver until 21st October, 1869, when I resigned. General Innis was Receiver previous to my appointment of the same road, having been appointed by Governor Brownlow. I operated the road for about thirty days at a very considerable loss; my recollection is that we lost about $10,000 or $15,000 that month. On the 1st September, 1868, after consultation with Governor Brownlow, I leased the road to the Nashville and Chattanooga Railroad Company, which latter company agreed to run the road and save the State harmless as far as the pay of employees, &c., was concerned. The lease was made because it was impossible to make the road pay expenses. The roadbed, cars, and machinery were in a bad condition. The hands had "struck," the roadbed was grown up with wild weeds, the tanks were dry, and one bridge had been burned, and the rolling stock was in a bad condition. The employees under the 2 3 4

previous Receiver, as also under the old company, had not been paid, and "struck," and threatened to destroy the property of the company, and did burn one bridge above mentioned. The Tennessee River bridge was in danger, and I employed a guard with shot guns to protect it.

The State advanced bonds to me to the amount of $250,000 in bonds (250 bonds) for the Nashville and Northwestern Railroad, and 200 bonds of $1,000 each for the building of the Huntingdon branch.

The lessees operated the road during the balance of my receivership, and thereafter the same parties re-leased the same from the Legislature.

The experiment made by me in the running of the said Nashville and Northwestern Railroad was convincing to my mind that the road could not be operated by a receiver without loss to the State. During the month in which I run the road we did repairing to the roadbed but just sufficient to run the trains. A force sufficient to keep it in proper repair would have increased our loss during that time to $30,000, or thereabouts. There was hardly a safe bridge on the road between Nashville and Hickman, a distance of 170 miles. The road was not completed by the company, and the Government of the United States completed the building of the road, a distance of some 40 or 50 miles this side, or east, of Tennessee River, as a military measure. I do not know this fact of my own knowledge, but simply as a matter of current history.

(Excepted to by counsel for complainant as hearsay evidence, and therefore incompetent.

S. WATSON,
Solicitor for complainant.)

Cross-examined by SAM'L WATSON, solicitor for complainant:

My occupation before I took charge of the Nash-

ville and Northwestern Railroad Company as Re- 9
ceiver had been that of physician, and I had also been Receiver for the State of the Memphis, Clarksville and Louisville Railroad Company. I was Receiver of the latter road from January, 1868, to Dec., 1869. I never had any experience whatever, or management, or connection with the running of a railroad before that time.

In politics I was in accord with the Brownlow administration. I was appointed without any solicitation to the receivership of both roads. Innis had 10
been the Receiver for about six months previous to my appointment of the Nashville and Northwestern road.

I gave my deposition before the committee of the Legislature to investigate the N. & N.-W. R.R. Co. and made a report to the comptroller of the State on November 1, 1869, embracing the month of October, 1869, and in that report I did make use of the words following: "A comparison of the earnings of the road for the last fourteen months shows a 11
steady increase in its business, and gives strong hopes of its ultimate ability to meet the payments due the State on account of interest."

This report embraces ten days after I went out of office of Receiver, by arrangement with my successor.

My recollection is that the Nashville and Northwestern Railroad Company accepted the provisions of an act of the Kentucky Legislature extending the liens of the Tennessee bonds issued to that 12
road to that portion of the road lying in Kentucky.

(Excepted to by counsel for defendants, because not the best evidence.)

I consider the experience of running the road for one month as Receiver as aforesaid as conclusive to

13 my mind that the road could not be run without great loss to the State, and I would have had to cease the operation of the road after that month's trial for want of funds.

Re-examination :

Colonel Innis, previous to his appointment, was the colonel of a regiment of engineers and bridge builders in the United States Army, called the Michigan Engineers. And immediately before his
14 appointment as Receiver he was the Superintendent of the Nashville and Chattanooga Railroad Company, under Mr. Burns. I had employed under me during my receivership experienced and competent railroad men. The impression I got that the Nashville and Northwestern Railroad Company accepted the provisions of an act of the Kentucky Legislature extending the liens of Tennessee bonds issued to that road, to that portion lying in Kentucky, was obtained while I was Receiver of said
15 railroad.

D. B. CLIFFE.

Subscribed and sworn to before me, this 29th August, 1879.

E. R. CAMPBELL,
Examiner.

16

Deposition of Joseph W. Drexel.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston R. R. Co. 1

vs.

THE MEMPHIS AND CHARLESTON R. R. Co. *et al.* 2

Testimony and proofs for final hearing on the part of the respondents in the above entitled suit taken under and pursuant to the 67th Rule in Equity as amended, before William H. De Lancey, Special Examiner, duly appointed herein.

52 Broadway,
New York, March 1st, 1880. 3

Deposition taken by consent of Counsel in the above entitled suit before William H. De Lancey, Special Examiner.

(Deposition taken subject to all legal objections of both parties.)

Present—CHAS. H. TWEED,
Of Counsel for Defendants and Substitution Bondholders. 4

E. L. ANDREWS,
Of Counsel for Complainants.

5 JOSEPH W. DREXEL, a witness produced on the part of the respondents, being affirmed as a witness, testified as follows:

My name is Joseph W. Drexel; my age forty-nine: my residence New York City; no occupation; have retired from business.

1 Q. Before you retired from business, in what firms were you a partner?

A. In the firm of Drexel & Co., Phila., Drexel,
6 Winthrop & Co., of New York, until July, 1871, and of Drexel, Morgan & Co., and also Drexel, Harjes & Co., Paris; I retired from the firms of Drexel & Co., Drexel, Morgan & Co. and Drexel, Harjes & Co., Dec. 31, 1875.

2 Q. While you were a member of those firms did they deal as bankers in the bonds of the State of Tennessee?

A. We dealt in bonds generally, and that, of course, included the bonds of Tennessee.

7 3 Q. Had your New York and Philadelphia firms representatives in the Stock Exchanges of those cities?

A. Yes.

4 Q. Were you familiar with the manner in which Tennessee bonds were dealt in on those Stock Exchanges?

A. Yes.

5 Q. Did you ever know or hear of any Tennessee bonds being bought or sold as carrying a lien upon
8 any railroad in the State of Tennessee to which they might have been loaned?

A. No.

6 Q. Did your firm of Drexel, Winthrop & Co. in or about 1870 become the purchasers of any of the substitution bonds issued by the Nashville and Decatur Railroad Company?

A. We became part purchasers to a large extent

in company with R. T. Wilson & Co., A. Iselin & Co., and the New York Guaranty and Indemnity Company of the bonds issued by the Nashville and Decatur Railroad Company at that time. The whole amount of the loan was $2,100,000, and we bought about $1,900,000.

7 Q. At the time that your firm became part purchasers of those bonds had you any knowledge of any claim of any holders of bonds issued by the State of Tennessee and loaned to the Nashville and Decatur Railroad Company, or to its predecessors, that they had any lien or claim upon the property of that Company or its predecessors?

A. No.

8 Q. Did your firm, in connection with the N. Y. Guaranty and Indemnity Co., issue the advertisement for the sale of those bonds now shown you?

A. Yes, sir, we did—a copy of which advertisement is as follows:

December 31, 1870.

FINANCIAL.

SEVEN PER CENT. FIRST MORTGAGE BONDS

OF THE

NASHVILLE AND DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile, on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of paying a debt due to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence.

DREXEL, WINTHROP & CO.,
18 Wall Street.

NEW YORK GUARANTY AND INDEMNITY CO.,
52 Broadway and Exchange Court.

13 9 Q. If the holder of any of the bonds of the State of Tennessee which had been loaned to the Nashville and Decatur R. R. Co. or its predecessors had asserted any lien or claim upon the property of that Company by virtue of those bonds, would you have made the purchase?

A. No, sir.

10 Q. Would you have issued that advertisement and given the bonds the endorsement of your firm if you had known of such a lien or claim being as-
14 serted?

A. No, sir.

11 Q. Those bonds were sold by the interested firms, or by some of them, to the public, were they not?

A. Yes.

12 Q. You and the other parties sold them to the public as first mortgage bonds, secured upon the property of the Nashville and Decatur R. R. Co., as stated in the advertisement issued by your firm
15 and the N. Y. Guaranty and Indemnity Co., did you not?

A. Yes, sir.

13 Q. Did you afterwards become yourself a purchaser of any of the substitution bonds of the Memphis and Charleston R. R. Co. issued under the purchase of the State lien?

A. Personally I subsequently bought $50,000 of the first mortgage bonds of the Memphis & Charleston R. R. Co., each of which bonds bears an en-
16 dorsement to the effect that the lien previously held by the State of Tennessee against the road had been vested in trustees under an assignment from the State to be held as security for that issue of bonds.

14 Q. At what price did you buy those bonds and when?

A. To the best of my recollection at 90 to 95 and 17
subsequent to 1877.

15 Q. At the time of your purchase of those bonds had you any knowledge of any claim on the part of any holders of Tennessee State bonds loaned to that R. R. Co. or any other R. R. Co. in Tennessee that they had any lien or claim upon the property of that or any other R. R. Company by virtue of those bonds?

A. I say most emphatically, no; I would not have entertained the proposition for a moment if I 18
had known of any such claims.

16 Q. Are you still a holder of those Memphis and Charleston bonds?

A. I am.

Cross-examination by MR. ANDREWS:

17 x Q. Where did you reside at the times mentioned in your direct examination?

A. For part of the time I resided in Philadelphia, 19
but during these transactions I was in New York the major part of business hours, and in the summer of 1871 I came to New York to reside permanently.

18 x Q. Did you purchase $1,600,000 of those substitution bonds without getting any legal advice as to their title?

A. I did not know them under the name of "substitution bonds," but we bought about that amount in connection with other parties of the first mort- 20
gage bonds of the Nashville & Decatur Railroad. We took all the precautions we usually did in buying bonds for ourselves, and had we felt the necessity of having any legal assistance we would have called it in. I do not recollect whether we felt any such necessity or not or whether we took legal advice or not. In case we thought there was necessity for

legal advice we handed it to our regular attorney. Mr. Robert Winthrop of my firm would be more likely to know than I.

19 x Q. Who brought these securities first to your notice.

A. Mr. R. T. Wilson, so far as I recollect.

20 x Q. Did you not have frequent conversations with Mr. Wilson on the subject of these securities.

A. I recollect talking with Mr. Wilson about them after the issue of the advertisement after I came to New York. Mr. A. J. Drexel had more frequent conversations with Mr. Wilson previous to the purchase.

21 x Q. Did Mr. Wilson at any of the times mentioned in your direct examination exhibit to you the opinion of Judges Davies and Davis, to the effect that the Tennessee State Bonds were paramount liens upon the railroads to which they were issued, or speak to you of that opinion in any way.

A. No, sir; he never did. He could not have described them as first mortgage bonds had he done so.

22 x Q. Did you have any conversation with Mr. Iselin while the bonds were being sold.

A. Yes.

23 x Q. Did he exhibit or speak of that opinion to you?

A. No, sir; he did not.

24 x Q. Please produce a copy of any opinion which your firm received upon this subject?

A. I will if such a one ever existed or is now in existence.

Re-direct: 25

25 Q. Did not Mr. Donaldson, as Chairman or Mr. Williams, as Secretary of the Committee of Tennessee bondholders or any Tennessee bondholders ever exhibit to you any such opinion of Davies and Davis, or any opinion to that effect?

A. No.

26 Q. If any claims on behalf of Tennessee State bondholders that their bonds constituted a paramount lien upon the property of the railroad company to which they were loaned had been communicated to your brother Anthony J. Drexel, or to your partner Mr. Winthrop, would they in the usual course of business have communicated that fact to you before the tranaction was consummated? 26

A. Yes.

Re-Cross:

27 x Q. Could you not have obtained a printed copy of Davies and Davis' opinion had you sought for it? 27

A. I neither knew then nor do I know now that such an opinion existed. I never heard of it till within a week.

JOS. W. DREXEL.

Subscribed and affirmed before me, this 1st day of March, A. D. 1880.

WILLIAM H. DELANCEY, 28
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly affirmed and cautioned, in the above-entitled suit and exinamed, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated March 1st, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

Deposition of Vernon K. Stevenson.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

against

MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

1

2

52 Broadway, August 12, 1879.

Hearing to take the deposition of VERNON K. STEVENSON, pursuant to notice.

Present—Mr. ANDREWS for Complainant.
Mr. HUMES for Defendant.

It is consented and agreed by both parties that the deposition of the witness, Vernon K. Stevens, shall be taken but once, and is to apply to each of the above-entitled actions, and be considered as testimony in each. 3

It is agreed by counsel that this deposition need be taken but once, and that it may be read as evidence in all the causes in which the Louisville & Nashville Railroad Company, either at Nashville or Memphis, is party. 4

VERNON K. STEVENSON, being first duly cautioned and sworn in each of the above entitled actions, deposes and says:

5 *Direct-examination* by MR. BAXTER, Defendant's Counsel:

Q. What is your name, age, residence and occupation?

A. My name is Vernon K. Stevenson; I was 67 years old the other day; I reside in the city of New York; I am President of the Real Estate Trust Company, and in some respects agent for railroads.

Q. Were you ever connected at any time with
6 any of the railroads of Tennessee; if so, with what railroad, when and in what capacity?

A. I was connected with the railroads of Tennessee. I was first Commissioner for the Nashville and Chattanooga Railroad under the charter. I was then first President of it, and continued so for 20 or 30 years. I was then President of the Winchester and Alabama Road, and so continued until its completion, when I resigned. I was then President of the Nashville and Northwestern Road, and
7 continued so until after the close of the war. I was President of all three at once, I think; that is, the succession, I came into the Presidency of them. I was President of the Nashville and Chattanooga Road from about 1844-5 to 1865, and I was President of the Northwestern Road. I don't recollect exactly the time I became President of the Winchester and Alabama Railroad. It was after the first organization had failed to build the road. It was broken down, and I took it up and finished it
8 in a couple of years, in connection as a branch of the Chattanooga Road, in connection with it and its interests. The Northwestern Road, I think, I took possession about 1858-9 as the President, but I don't recollect accurately the time. It had been under contract and broken down also. I took it up and finished it in connection with the Nashville and Chattanooga Road.

Q. Did you as president or as the officer of any of said railroad companies receive any bonds from the State of Tennessee loaned to said companies by the State under the Internal Improvement Law of that State?

A. Yes, sir, I did.

Q. In the negotiating or disposing of said bonds did you sell them directly to purchasers or were they sold through bankers and brokers generally?

A. Well, I think those on the Winchester and Alabama Railroad were all sold through bankers and brokers, perhaps some of them might have been delivered to parties we purchased iron of and foreign parties. My impression is that they were pretty much all disposed of through bankers or brokers, either by the company directly or through parties that they dealt with.

Q. In negotiating bonds were any representations made by the company or their authorized agents to the effect that the bonds were liens upon the roads in favor of the holders of the bonds?

(Objected to as immaterial).

A. Never that I knew of—never in any case. Straight bonds sold for more than the endorsed bonds; that fact had been tested by the sale of bonds with roads that I was connected with. The endorsed bonds by the State for railroads sold for less than straight bonds in all cases, and therefore parties selling bonds and parties buying bonds were each mutually anxious that no idea of lien should be had on either side. There was a difference in price of one to two or three per cent. on all bonds endorsed by the State for the roads in the State and straight bonds issued by the State without any liens upon anything.

Q. Do I understand that bonds of the State of Tennessee which had been issued to pay for the

13 subscription of the State for stock in turnpikes, having no lien upon anything, sold for more than bonds of such railroad companies as the Nashville & Chattanooga Railroad and the East Tennessee & Georgia Railroad endorsed and guaranteed by the State?

A. I do; the difference was one to three per cent. never less than one, that I ever recollect of, and as high sometimes as three per cent. difference.

Q. In selling State bonds loaned to railroads in
14 the New York market, what endorsement or system of marking, if any, was resorted to by which the bonds could be known in the stock market as having been loaned to any particular company?

A. There was no such endorsement that I ever heard of; none on any of the bonds that I had anything to do with.

Q. What was the difference in price, if anything, between the straight bonds loaned to the railroads under the Internal Improvement Act of 1851-2, and
15 straight State bonds that had been issued to build the Capital, buy the Hermitage, and for other purely State purposes?

A. Not one particle; they all sold precisely the same. No question was ever asked until after the war, as to any bond issued by the State being more valuable than another bond issued by the State.

Q. What was the difference in price, if any, between State bonds issued to important and solvent roads and to those that were issued to unimportant
16 and insolvent roads?

A. There was not a particle of difference; and no difference in the price after the roads became insolvent even after the war. Nobody ever asked or cared whether the bonds were issued for the Nashville & Henderson Road or whether issued for the East Tennessee & Virginia or Memphis & Charleston Road, which was then one of the best railroads in the

State; nobody asked any questions and never 17
thought who they were issued to, or how they were issued.

Q. Was there any record or source of reference kept here in New York by which purchasers of Tennessee bonds could ascertain to what particular companies they had been issued?

A. Not that I ever heard of; never heard any questions asked. If you called Tennessee bonds, that's all you said, it's a Tennessee bond. There was no distinction that I ever heard of. 18

Q. When was the first information given to the public by which they were enabled to select out the bonds issued to particular railroads?

A. Well, I don't know of my own knowledge about that, I never heard of it until a few years ago.

Q. What is the difference now on the Stock Board in New York, between the price of Tennessee bonds loaned to railroads and those issued by the State for other purposes? 19

A. None that I know of; I don't know a particle of difference.

Q. What is the difference in price now between bonds of the State loaned to solvent and important roads and those loaned to insolvent and unimportant roads?

A. None at all that I know of; I don't think the question is asked in dealing in them even to-day, at least I have not known of its being asked as to what roads the bonds are issued to. 20

Q. Were the bonds loaned to different railroad companies generally disposed off as soon as issued, were they in some instances held for greater or less periods of time by the companies?

A. Well, all the strong roads held their bonds; they earned them before they got them, and they paid what the State required to be paid before they

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Q. Were the bonds loaned to different railroad companies generally disposed off as soon as issued, were they in some instances held for greater or less periods of time by the companies?

A. Well, all the strong roads held their bonds; they earned them before they got them, and they paid what the State required to be paid before they

21 got them, and disposed of them generally as necessity required future payments to be met, and generally held some all the time. One company I was connected with held its bonds and held over bonds when the road was finished. When I resigned as President I turned over the bonds to the Board that was left over, with the North-Western Railroad Company that I was building, and it ought to have been pretty hard pressed, as we took it broken down, and yet we always had more or less bonds on
22 hand. From the time of receiving until the next time of receiving we almost always had bonds on hand, sometimes a good many.

Q. Between the time that a company would receive bonds from the State and the time that it would negotiate these bonds to outside parties, was the interest paid by the company to the State or not?

A. Yes, always.

Q. What was the price of Tennessee State bonds
23 when the Internal Improvement Act of February, 1852, was passed. Were they at or above or below par, and how much?

A. I don't recollect accurately; my impression, generally, is that the bonds were never below par during the building of the road except, perhaps, in the Panic for a very few weeks. They were always about par, or a little above. Certainly that was so about 1852, and from that to 1854, 1856, and 1858. Perhaps 1857 is the time I said there was a panic,
24 and the bonds might have been for a little while below par, but I don't think they continued so long.

Q. When railroad companies would receive bonds from the State under that law, would they keep any list or memorandum of the numbers of the bonds received by them so as to identify them and keep trace of them?

A. No; not for that purpose, but whenever any 25
were shipped I always had the numbers taken until I knew when they were received so as to identify them in case they were stolen or lost on the way.

Q. I mean by my last question was any such record kept with a view of being able to trace the numbers of the bonds so as to know what bonds to pay off?

A. No, sir; you paid in any that you had; you paid in just as you chose; bonds and coupons were indiscriminately paid in; they would be paid 26
in without regard to whether they belonged to bonds issued to them, or any other bonds, unless it was endorsed bonds. We always paid identical endorsed coupons and we paid identical endorsed bonds in redeeming them, because our immediate liability was on them, but the other bonds we never took any charge of, because we did not consider there was any lien on them; we never undertook to pay the particular bond issued to us, but whenever it came to paying endorsed bonds, they were very 27
careful to take up bonds that were endorsed for them, and so with the coupons, that is they paid the coupons that the State endorsed for them.

Q. When railroad companies of Tennessee would pay the interest, which they had agreed to pay, to whom did they pay it?

A. They paid it to the State.

Q. Through whom?

A, To the Bank of Tennessee. It was a State bank, belonging to the State, and its business was 28
geaerally done through that bank. The Bank of Tennessee was always the fiscal agent of the State of Tennessee.

Q. When a railroad company would pay in a given amount of money to the Bank of Tennessee for interest, would it designate to the bank the particular bonds or coupons upon which that money

29 was to be paid, or did it just pay in so much money on account of interest due from the company to the State?

A. Well, the companies knew always what they had to pay, and sometimes they would go and pay it. Say the company owes this to the State for interest on the bonds issued to it; sometimes they would pay in part to the State and the State would let it run a little, but we would pay it all in from time to time, but it was never paid on any particu-
30 lar bond; it was paid as so much interest due the State.

Q. Who paid out this money and took up the coupons of the State?

A. The Bank of Tennessee. I suppose the money was paid into that bank, who kept the coupons as vouchers to show that they had been paid.

Q. Did any railroad company with which you had any connection, or any other company with whose course of business you were acquainted, have
31 any agent either at Nashville, New York or Philadelphia to pay the interest on straight State Bonds, that had been loaned to them?

A. No, sir, never.

Q. Did any bondholder of Tennessee ever present to any railroad company, so far as you know, any coupons of the State Bonds loaned to such company and ask payment thereof from such company?

A. Never that I heard of.

Q. These coupons which had been paid and taken
32 up by the State; were they kept by the State or returned to the companies?

A. I don't recollect of any being returned to the companies.

Q. Are you acquainted with the circumstances that led to the change in the Internal Improvement system of Tennessee from endorsing bonds of the companies by the State to loaning bonds of the

State to the companies? Please state fully all con- 33
nection you had with the change of the system, if any; and state if you know what were the motives and reasons which induced such change?

A. It was brought about on the part of the railroad companies to have straight bonds because they sold for more, and the State did not care whether they endorsed or issued straight bonds, they expected to be responsible in either case, and, as at that time they did not issue any more than they were well secured in, it made no difference to the members 34
of the Legislature which they voted for.

Q. Where were you living in 1869 and 1870?

A. In New York.

Q. What business were you engaged in then?

A. I think I was in the real estate business—real estate agent here. I went into business here to start my son. He was anxious to go into law or merchandizing and he did not care which. I continued in business with him four or five years, until 1871 or 1872, when I withdrew from his business, 35
and he is carrying it on now.

Q. Was the fact known in New York in 1869 and 1870, that the railroad companies of Tennessee were paying off their debts to the State by issuing company's bonds and using the proceeds to buy up bonds of the State to retire their debts?

A. It was very publicly done. The bonds taken for that purpose bought and talked about all the time, swapping, exchanging, twisting to get the bonds to pay it it was a very notorious matter here, 36
as much so as anything, because there was so much of it; I have no doubt every bondholder was applied to more than once and the explanation made what they wanted with the bonds.

Q. Was the fact known in New York in 1870 and 1871 that the State of Tennessee had filed a bill at Nashville, claiming that the lien belonged to the

State, and asking to sell such a delinquent railroad as had been unable to buy up bonds of the State enough to pay off their debts?

A. It was a matter generally understood among bondholders, and it was thought by them that the bonds would be so benefited by taking so much off the market.

Q. What proportion of the entire bonded debt of Tennessee is held in New York, do you suppose?

A. Four-fifths, probably; I should think here and in European agencies, but I don't know accurately.

Q. Did you ever hear any holder of Tennessee bonds complain of the action of the State and of the companies in retiring their debts, or selling out their railroads until the litigation in this case?

A. No, sir; never.

(This entire examination is taken subject to legal objection, and complainant's counsel moves to strike out all the answers based upon hearsay, and not upon personal knowledge, and each and every of them.)

Cross-examination by MR. ANDREWS, complainant's counsel, begun:

1 x Q. Now, Mr. Stevenson, you state that you are an agent for the railroads in this city. Will you please state what railroads you are agent for?

A. The Nashville & Chattanooga road and its branches.

2 x Q. Are you a holder of any of the securities of the Nashville & Chattanooga road?

A. I hold some few of the securities, but not many.

3 x Q. Do you own securities on any other Tennessee railroads?

A. No, sir.

4 x Q. Are you a holder of Nashville & Chatta- 41
nooga securities, and to what amount?

A. I hold very little of it.

5 x Q. How much of the stock?

A. Well, I hold quite a large amount of stock of the Nashville & Chattanooga and St. Louis.

6 x Q. That is one of the roads against which bills are pending by Tennessee bondholders for the enforcement of their statutory liens, is it not?

A. Yes, sir.

7 x Q. During the time you were an officer of the 42
Tennessee railroads did you ever have occasion to give a receipt to the State of Tennessee or its officers for bonds of the State received by your companies?

A. I think I have.

8 x Q. Do you know whether or not, as a matter of fact, those receipts given by you did not specify the numbers of the bonds received by your companies?

A. I don't recollect; I think it very likely, but I don't recollect. 43

9 x Q. I understand you that the companies over which you presided I think you were President?

A. Yes, sir.

10 x Q. Did you not keep a record of the numbers and descriptions of the Tennessee bonds received by them?

A. I don't recollect that they did; I may possibly be mistaken in that; their books will show more correctly.

11 x Q. You are not sure they did not keep such 44
a record?

A. No, I am not sure whether they kept a record or not; they kept a record when they shipped the bonds.

12 x Q. I understand that you personally participated in the negotiations by which your Companies disposed of Tennessee bonds to the first

takers. I think that is a correct statement of your testimony?

A. In some cases, not generally.

13 x Q. Now in those cases in which you did personally participate in negotiating, I understand you that it was desired by the purchasers of those bonds that there should be no lien to protect those securities?

A. No, I have not said that at all.

14 x Q. I give your exact words?

A. I stated that it was mutually desirable by the parties, and gave as the reason that the bonds sold for less.

15 x Q. Did you ever receive any indication from any purchaser of Tennessee bonds that he did not wish to have a lien to secure the bond that he was about to purchase?

A. I don't think I ever heard the question to come up in any shape except when the bonds were being gotten up because nobody ever asked for a lien. When bonds were being gotten up the straight bonds issued to the roads would bring more, and as that was a matter which would meet the wishes of the buyer I presume they would have the same feeling as the seller, as they sold for more.

16 x Q. Did the straight bonds issued by the State of Tennessee, prior to the General Internal Improvement law of 11th February, 1852, sell above par or at par. I mean all of them; and was the credit of the State of Tennessee at that time entire unimpeachable and unimpeached?

A. I don't recollect of their ever having sold under par. I don't think they sold for less than par, and if they did it was for a very short time and for a very small amount.

18 x Q. How did the State credit of Tennessee stand then?

A. I don't think any State stood better than Tennessee.

19 x Q. Did the straight bonds of the State of 49
Tennessee, issued prior to the year 1851, and so in the year 1850, and during a part of 1851, until the fall or winter, did they not sell at a better price and command a higher credit than the State bonds issued after the Internal Improvement Law was passed?

A. I think not; if there was any difference it was a very slight difference and was not regarded; it had no effect at all.

20 x Q. Then I understand you that the State 50
bonds issued after the General Internal Improvement Law sold for a better price than those immediately preceding its passage?

A. I don't think it had any effect. The general impression here was that the State was secured and therefore the large volume of bonds issued did not affect its credit.

21 x Q. What is the lowest price you think Tennessee bonds sold at; I refer to the years 1850-'51,

A. I do not recollect the bonds selling below par, 51
but not having very much connection I may be at fault in the matter. After the bonds were issued I had connection and I think I recollect pretty accurately.

22 x Q. Now you were an officer of these railroads, Mr. Stevenson; how many Tennessee bonds could be floated—were floated at par before the passage of the act of February 11th, 1852, during 1850 and 1851, easily and without difficulty?

A. You can tell if the State was giving away 52
bonds there would be many afloat, but if the State were issuing bonds where it was secured, as the early bonds were secured and all well secured, they could be issued without impairing its credit, and it was the knowledge of that fact that prevented the impairing its credit.

23 x Q. Did you know, or ever hear, or ever read,

53 that the act of the Tennessee Legislature passed on the 11th February, 1852, under which I understand that your companies received bonds, contained these words: "That so soon as the bonds of the "State shall have been issued for the first section "of the road as aforesaid, they shall constitute a "lien upon said section so prepared as aforesaid "* * * and the State of Tennessee upon the is- "suance of said bonds, and by virtue of the same "shall be invested with said lien or mortgage
54 "without a deed from the company for the payment "of said company of said bonds with the interest "thereon as the same becomes due."

A. I had a great deal to do with the getting up of that law, and was by when every word was scanned, talked and reckoned about. Mr. Frank Fogg wrote it. He was a brother to my brother-in-law; and I stumped the State to get it passed; we could not get it passed before, and I went to the counties where the opposition was and spoke
55 against the politicians and passed that law.

24 x Q. Did you ever hear of an Act passed at the same session of the legislature, about three weeks and a half before the passage of this general law by which the issue of State bonds to the East Tennessee and Virginia Railroad for building the bridges was authorized?

A. I had very little to do with that; I believe that there was such an act passed for one road.

25 x Q. Do you know what model was taken for
56 drafting this General Improvement Law?

A. We took the the model from the earliest roads in South Carolina in getting up our charter.

26 x Q. Now, as you have read the passage I have just quoted from that law, how could you state in your direct examination that the bonds were never considered, if I am correct in quoting you, liens upon these roads?

A. In drawing up that act it was solely intended 57
to secure the State, and the law was made as distinctive as possible in that direction to secure the State only.

27 x Q. What did they mean, then, that the bonds should constitute liens?

A. Very well; the State issued bonds, and the State was liable for the bonds.

28 x Q. Did the Bank of Tennessee ever lend any of the companies with which you were connected, moneys to pay their interest with on these bonds? 58

A. I don't recollect that they did; they may have done so, but I don't recollect; I was director in the Union Bank from the time it broke down in 1837 until the war; my business was generally done there, and any borrowing was done at the Union Bank; but we did not do much.

29 x Q. Did the State bonds your railroad received contain any reference to any legislation of the State of Tennessee under which they were issued? 59

A. I don't recollect, sir; not accurately to speak of, because it is a matter I had not charged my mind with.

30 x Q. You state that the Tennessee bondholders made no objection to the act of the Legislature of 1869–70; do you not know that a committee of Tennessee bondholders about that time obtained the opinion of the late Chief Justice of the State of New York, and of another eminent lawyer in this city, to the effect that that legislation of Ten- 60
nessee impaired their interests in the liens on the railroads?

A. No, sir. I knew nothing of it at all. A great many bondholders came here, and I was asked to the meetings about that time and afterwards. They were the large bondholders.

31 x Q. Do you not know that that opinion was printed, and publicly and widely circulated?

61 A. No, sir. Never saw it. I don't think I ever heard of it even. It may have been done, but I never heard of it before.

32 x Q. You mention that there was a great deal of buying and changing and operating, or words to that effect, in Tennessee State bonds, or by third parties under these substitution laws. Were you interested in railroads at that time?

A. Yes, sir. I was interested in the Nashville and Chattanooga and St. Louis Railroad. I held
62 stock in it for thirty years.

33 x Q. You are not an officer now?

A. No, sir.

34 x Q. Were you consulted in reference to the purchases of bonds by any of these companies?

A. Yes, sir.

35 x Q. What companies?

A. The Chattanooga road had to purchase bonds to pay for the Northwestern road, and that led me in contact with buyers of other roads in Tennessee.

63 36 x Q. I suppose it was your object, and that of your coadjutor, to purchase Tennessee bonds at as low a price as possible, for the purpose of this substitution?

A. Well, I don't understand exactly your meaning. We gave the market prices and never made an attempt to interfere directly or indirectly. I think our company paid as high an average as 70% on the dollar for bonds they bought for the Northwestern Railroad.

64 37 x Q. Is that positively true of other railroad companies who obtained State bonds at that time?

A. I can speak for none but my own company. We paid the market prices; never, in any case, did we undertake to put bonds down; and the whole history of the Nashville & Chattanooga Road is that of integrity and honesty and principle from the bottom to the top in everything.

Adjourned to August 13th, at 11 A. M.

AUGUST 13th, 11 A. M. 65

Adjourned to August 18th, 1879, 12 M.

AUGUST 18th, 1879, 12 M.

Cross-examination closed.

Re-direct examination by W. Y. C. HUMES, Esq.

The witness deposed as follows:

During the whole time of my connection with the Nashville & Chattanooga Railroad Company, 66
Northwestern Railroad Company and Winchester and Alabama Railroad Company, I was a resident citizen of Tennessee, and gave my entire time to the business of those roads; I did make all important contracts and payments for them and managed their finances—I received, and controlled and disposed of the State bonds issued to said railroads; those bonds were not generally sold by me personally to purchasers, but were forwarded by me to bankers and brokers in New York, for sale. 67

V. K. STEVENSON.

Subscribed and sworn to before me, this 18th day of August, 1879.

WILLIAM H. DELANCEY,
Notary Public.
Westchester County, acting in New York County under and by virtue of 68
chapter 807, of the Laws of 1873, of the State of New York.

Deposition of J. G. M. Ramsey.

Caption same as in Craig's and Jackson. 1

I was eighty-two years old on the 25th day of March last, and have resided all my life in or near Knoxville, Tenn., except when I have been absent temporarily. I have been a practicing physician during my life; I have been president of several different banks, and among others of "The Tennessee State Bank", at Knoxville. I was appointed by Governor Trousdale, in 1851, the agent of the State of Tennessee, to receive for the East Tennessee and 2
Georgia Railroad Company, three hundred and fifty (350) State of Tennessee coupon bonds, payable to blank or bearer, bearing six per cent interest, evidenced by coupons attached to the bonds, payable semi-annually in the City of New York; each bond was for $1,000, and had forty years to run to maturity. The duties of my agency were to sell the bonds, and apply the proceeds to the ironing and equipping of the road, as required by the Act. I was appointed to and did act as the agent of the 3
State of Tennessee and not of the railroad company. I went in person to Baltimore, Philadelphia, Boston and New York, to sell these bonds,—and sold in the New York market two hundred and forty-seven of them for cash, at rates varying from 103¼ to 104½, that is from 3¼ per cent to 4½ above par. I sold these bonds as straight Tennessee State Bonds, and procured the favorable price which I obtained for them by representing to them and showing from the Comptroller's report, that the indebtedness of the 4
State of Tennessee, amounting to only three mil-

5 lions of dollars ($3,000,000) one half of which was an interest paying stock ; that is the State's stock in the Bank of Tennessee and the Union Bank, and by representing also the resources of the State, the extent of its territory, the fertility of its soil, and the character of its people, and its climate, its agricultural products, and its mineral resources. I never mentioned or represented that the bonds were secured by any statutory lien on the property of the road in favor of the bondholder, nor did any broker
6 ever ask me any such question or make any such claim. I afterwards sold the balance of 103 bonds at par. These bonds were all sold prior to the year 1852, and during the year 1851. The 103 bonds which were last sold were sold at par or a little above. The Bank of Tennessee, of a branch of which at Knoxville I was President, was the fiscal agent of the State, and belonged wholly to the State, received revenues and made its disbursements in the payment of its judicial and executive officers, and in
7 the payment of its coupons on its bonds. The proceeds of the bonds I personally disbursed. I have no connection with or interest in the railroads of the State of Tennessee, their stocks or their bonds.

And further deponent saith not.

(Signed) J. G. M. RAMSEY.

(Excepted to for irrelevancy.)

8

Deposition of B. O. White.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co.,

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

Testimony and proofs for final hearing taken on the part of the respondents in the above-entitled suit, under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein.

NEW YORK, March 2, 1880.

Present—Mr. TWEED for respondents.
Mr. ANDREWS, for complainants.

(Deposition taken subject to all legal objections of both parties.)

B. O. WHITE, a witness produced on the part of the respondents, being duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

1 Q. What is your name, residence, occupation and age?

A. B. O. White; I reside on Staten Island; am Secretary of the N. Y. Stock Exchange, and am of full age.

2 Q. Are you a member of the N. Y. Stock Exchange, and how long have you been so?

A. I am and have been for a quarter of a century.

3 Q. Are you familiar with the method of buying and selling State bonds on the Exchange, and how long have you been so familiar?

A. I am and have been ever since I was a member, and also before while I was a clerk with bankers in the street as far back as 1849.

4 Q. State if you know how Tennessee State bonds were bought and sold on the Exchange and in the New York market?

A. They are sold as "Old Tennessees," "New Tennessees," and "New Series." Before the war they were sold as "Tennessee 6's" and "Tennessee 5's." I never heard of their being sold in any other way.

5 Q. Was any Tennessee six per cent. bond or Tennessee 5 per cent. bond a good delivery for purchases made in the regular way on the New York Stock Exchange of either class of these bonds from 1852 to the outbreak of the war?

A. All I can say is the same as the answer to the last question.

6 Q. When Tennessee State bonds are bought at the New York Stock Exchange can the purchaser know for what purpose the bonds he is purchasing were issued, whether to railroads or for building the Capitol, or for the Bank of Tennessee, or for turnpikes, or for any other purpose?

A. He cannot as called and dealt in in the market.

B. O. WHITE.

Subscribed and sworn to before me, this 10th day of March A. D. 1880.

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed I was attended at my office, No. 52 Broadway, New York City, by the counsel and witnesses aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence.

Dated March 10th, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

Deposition of John M. Fleming.

THE UNITED STATES OF AMERICA, } ss.:
Eastern District of Tennessee. }

Be it remembered, that on the 26th day of September, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office, personally came JOHN M. FLEMING, witness on the part and behalf of the defendants in a certain suit now depending, and undetermined, in the Circuit Court of the United States for the Western district of Tennessee, wherein Calvin Amory Stevens, *et al.*, on the part of the holders of Internal Improvement bonds of Tennessee, issued to the Memphis & Charleston R. R. Co., are complainants, and the Memphis & Charleston Railroad Company *et al.* are defendants, to depose and the truth to say in said suit. And thereupon the said John M. Fleming, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows:

1*st Inter.* What is your place of residence, and how long have you resided here?

2*d Inter.* Have you any connection with or interest in any of the railroads of the State, their stocks or securities?

3*d Inter.* How long have you been a resident of the State, and what has been your occupation since you were 21?

4*th Inter.* Were you a member of the General

5 Assembly of the State of Tennessee during the years 1869 and '70, and what official position did you hold in that Assembly?

5th Inter. State the facts, reasons and public sentiments of the State which caused that General Assembly to pass the Act of January 20th, 1870, amendatory of the Act of 10th of March, 1869, enabling the railroads to retire their debts to the State and also the Act for the sales of delinquent roads at the suit of the State?

6 *6th Inter.* State whether any corrupt influences within your knowledge were used by the railroad companies, or their officials, or any of their agents to induce that legislation?

7th Inter. State who were appointed Commissioners of the State by the bills to foreclose the delinquent roads, and why were the three men elected who were?

8th Inter. State any other fact or facts which you may know which will throw light upon the inquiries 7 already propounded to you.

Answer to *Inter.* 1. I reside in Knoxville, and have lived here since May, 1855.

Ans. to 2d. None whatever.

Ans. to 3d. I was born in Tennessee, and with the exception of ten or twelve years during my boyhood, have lived within the State all my life. I am forty-six years of age. Since attaining my majority my occupation has been that of an editor and 8 lawyer; have been twice a member of the State Legislature, and for two years was State Superintendent of Public Instruction. For about twelve years, closing December, 1878, I was editor of a daily political paper in Knoxville.

Ans. to Inter. 4. I was a member of the General Assembly of the State of Tennessee for 1869-70, and a portion of 1871, and held the official position

of Chairman of the House Committee on Judiciary. 9

Ans. to Inter. 5. In answer to this interrogatory I can state in general terms and somewhat in detail "the facts and reasons" that influenced my own action as a member of the General Assembly, and, as I believe, the action of those of other members constituting a majority of the body with whom I co-operated in effecting the legislation referred to.

The General Assembly of 1869–70, when it met in October, 1869, found the State of Tennessee in a deplorable financial condition. The political and 10 social condition of the State from the close of the war up to that time may be described as having been one of disorder. The people were much and widely divided in sentiment, and the majority, for political reasons, had been deprived of the right of suffrage by State Legislature enactments. Pending this state of affairs the Legislature had made very liberal appropriations to works of internal improvements (at the instance, it is proper to say, in many cases of the disfranchised element), so 11 that on the first Monday in October, 1869, when the General Assembly met, it was found that our State debt, actual and contingent, had swollen to the appalling volume of about $40,000,000 to $42,000,000. The State Treasury was empty, the resources of the State for purposes of revenue were very much reduced, in consequence of the demoralization of our labor system and other causes, and the people were neither in a condition nor humor to submit to a heavy rate of taxation. 12

The State had made default in the payment of interest the previous July, and its bonds in consequence were much depreciated in the financial markets. The General Assembly found itself confronted with the alternative of providing for the payment of the interest on the debt, or of repudiating or indefinitely postponing it in whole or in

part. The idea of repudiation was not seriously entertained by the majority of the body, and yet it seemed utterly impracticable to provide for the interest upon the face of the debt as it then stood. To reduce the debt, therefore, to a manageable condition became a study. Upon investigation only about $120,000 of bonds were ascertained to have been illegally and fraudulently issued, and the payment of those were interdicted. The validity of the remainder of the debt was practically recognized, and the Legislature went to work to so take care of the debt as to preserve the honor of the State. An examination of the general situation disclosed the fact that a number of railroad companies to which liberal loans of bonds had been made had become hopelessly insolvent. They had ceased to pay interest on the loans, their roads were unfinished and in the hands of Receivers appointed by the Governor, under the terms of the General Internal Improvement Acts. These roads, instead of paying expenses, were a burden upon the State Treasury. The rolling stock was wearing out without hope of replenishment, and the roads themselves rapidly going to decay. I had, myself, for several months before my election advocated through my newspaper the sale of all the defaulting roads as a measure of good State economy, and I was the author of the original bill providing for their sale.

My recollection is that the original bill, which was by no means perfect, but only designed as the basis upon which to elaborate a more perfect bill, was drafted by me in my own room, and offered in the House, without consultation with any one. The original bill was referred to the Judiciary Committee, to which committee I presented a more elaborate bill as a substitute for the original, and my recollection is that the latter bill was reported by the committee in lieu of the original, and with some

amendments finally became a law. The Commissioners appointed by the act, having selected their attorneys, undertook to proceed with their duties, but discovered, as they reported, that the law was insufficient, inasmuch as proper authority for proceeding in chancery for foreclosure had not been confirmed by the act. Thereupon a new bill, prepared, I believe, by the Commissioners and their attorneys, was presented and enacted, and under *that* law the defaulting roads were sold. The purpose of their sale, as before intimated, was to save as much as possible of the State's failing securities and utilize them in the reduction of the bonded debt. Subsequently to the introduction of the bill above described, and before its passage, the bill was introduced, which became a law on the 20th of January, 1870, enabling the debtor railroads to retire their indebtedness by discharging it with bonds of a series. This act was designed to remove and did remove the restriction that had been placed upon the railroad companies by the proviso to the act of 10th March, 1869, which restriction limited the payments by railroad companies, that had issued second mortgage bonds, to the same series of bonds to which the bonds belonged that had been issued to them. It was not considered that the bill (the act of July 20th, 1870) conferred any *new* rights or privileges upon the companies, but that it simply restored the privilege enjoyed under the Sinking Fund clause of the Internal Improvement Act of 1852, under which it was understood the railroad companies had discharged their amount indebtedness for years in bonds of the State without regard to series. This principle had been recognized from the establishment of our Internal Improvement System, by both the Executive and Legislative departments of State, and the General Assembly of 1869-70, in passing the Act of January

2d, 1870, did not regard it as any innovation upon the long settled policy of the commonwealth in regard to such settlements. But a few years before, the State, with the concurrence of all departments of the Government (the Attorney-General having sanctioned the proceeding), had settled with the Louisville and Nashville Railroad Company, receiving bonds in payment without regard to series. And this settlement was made by virtue of the provisions of the Act of 1852 and amendments thereto, above referred to. This Act of Jan. 20th, was believed to be inherently just but there was another consideration moving the Legislature to its enactment. The called solvent roads that were expected to avail themselves of its provisions were in an embarrassed condition. They had but recently been restored from military possession to the possession of the companies. They were struggling for rehabilitation under very discouraging circumstances. There was a general desire for their resuscitation and re-establishment as permanent thoroughfares for our commerce, but it was apprehended that under the pressure of accumulated debt and impaired credit they would soon be compelled to suspend their payments to the State, be classified as defaulting roads, and pass into the hands of receivers, and ultimately be sacrificed at immense loss both to the State and the companies, and in their view of the case it was regarded as a measure of sound and healthful policy for all the interests involved to accept from the so-called solvent companies in discharge of their debts the bonds of the State, of any series, and to permit them to issue *pro tanto* their own first mortgage bonds, the two-fold object having the reduction of the debt of our State and the rehabilitation of our railroad system. These two measures, the bill to sell the defaulting railroads, and the bill to enable railroad companies to retire their debts, were re-

garded as kindred measures, and progressed almost 25
pari passu, though differing considerably in the date of final passage. The friends of one measure were generally the friends of the other, the purpose in the minds of the majority being to reduce the volume of the public debt to manageable proportions, and to marshal all available assets of the State for that purpose. As a result of the operation of the two measures the volume of the debt was reduced to about $20,000,000, a sum which, with judicious management, I think might have been car- 26
ried by the State with comparative ease. Such are the principal facts and reasons that influenced my own action, and, as I believe, controlled the action of the majority of the members of the General Assembly of 1869–70. In regard to the legislature referred to in the interrogatory as to the "public sentiments of the State" in reference to the two measures, I can only say that while they were pending they seemed to command almost universal approval. Their passage was certainly generally acqui- 27
esced in. It was not until after the refunding of the State debt in 1873, when there arose a somewhat clamorous outcry against the validity of portions of the public debt, that there was manifested any serious popular dissatisfaction with either of the measures referred to. Notwithstanding the investigation of a joint select committee, of which I was a member, had shown that in some cases there had been irregularities in the procurement of bonds from the State, the legality of their issuance and the val- 28
idity of the debt had not been seriously disputed until 1873, as before stated, nor had the propriety and wisdom of the legislature referred to until then become a subject of grave popular complaint. Such is my recollection.

Ans. to Inter. 6.—No such influences were used by any of said parties within my knowledge.

29 *Ans. to Inter.* 7.—The commissioners appointed by the Legislature to sell the defaulting railroads were Hon. R. J. McKinney, Hon. Archibald Wright and Hon. Francis B. Fogg. The first two named had been Judges of our Supreme Court of Tennessee, and the last named was a lawyer of advanced age and marked eminence. All three were conspicuous personages in the Commonwealth, in whose integrity the whole population had confidence. It was because of their ability and universally recog-
30 nized incorruptibility that they were selected as commissioners by the General Assembly.

Ans. to Inter. 8.—I believe no other material and relevant fact occurs to me calculated to throw light upon the inquiries propounded to me.

And further deponent saith not.

(Signed) JNO. M. FLEMING.

31

32

Deposition of Ira P. Jones.

The said IRA P. JONES, being duly sworn and cautioned and charged, deposes and says:

That his name is Ira P. Jones; that he is 50 years of age; and was one of the publishers and proprietors of the *Nashville Union and American*, a newspaper published in the City of Nashville during the year 1871. The order of publication in the case of the State of Tennessee, complainant, against the Edgefield & Kentucky R. R. Co. *et al.*, defendants, a copy of which is here filed and made a part hereof, and marked "Exhibit A" to my deposition, was published in said paper on the 22d day of January, 1871, and the publication was continued therein daily to and including the 19th February, 1871.

The order of publication under the amended and supplemental bill, wherein the State of Tennessee was complainant against the Edgefield & Kentucky R. R. Co. *et al.*, defendants, was published in said paper on the 16th day of April, 1871, and the publication was continued daily therein until and including the 14th day of May, 1871.

A copy of said last-mentioned advertisement is here filed, marked "Exhibit B," and made a part of this deposition.

IRA P. JONES.

Subscribed and sworn to before me, this 29th day of August, 1879.

E. R. CAMPBELL,
Examiner.

EXHIBIT A TO DEPOSITION OF IRA P. JONES.

ORDER OF PUBLICATION.

IN CHANCERY AT NASHVILLE—STATE OF TENNESSEE.

Office Clerk and Master Chancery Court,
NASHVILLE, January 20, 1871.

THE STATE OF TENNESSEE,
Complainant,

vs.

THE EDGEFIELD & KENTUCKY R. R. Co. *et al.*,
Defendants.

It appearing from the allegations of the bill filed in this cause that the names and residences of a number of the stockholders of the defendants, the Edgefield & Kentucky Railroad Company, the Nashville & Northwestern Railroad Company, the Memphis, Clarksville & Louisville Railroad Company, the McMinnville & Manchester Railroad Company, the Winchester & Alabama Railroad Company, the Southwestern or Southern Railroad Company, the Knoxville & Kentucky Railroad Company, the Cincinnati, Cumberland Gap & Charleston Railroad Company, the Knoxville & Charleston Railroad Company, the Rogersville & Jefferson Railroad Company, the East Tennessee & Western North Carolina Railroad Company, are all unknown, as also the names and residences of a number of the holders of the bonds issued by the complainant, the State of Tennessee, to the before-named railroad

companies, and also of the holders of the bonds issued by said railroad companies, or any of them; and also of a number of the creditors of said railroad companies; and that the names and residences of a number of persons interested in said before-mentioned roads or railroad companies are also unknown.

It is, therefore, in pursuance of the provisions of the Act of the Legislature of the State of Tennessee, passed on the 21st day of December, 1870, entitled, "An Act to Amend the Act of 1870, Ch. 79, for the Sale of the Interest of the State in Delinquent Railroad Companies," passed July 1, 1870; and of the allegations and prayer of said bill in the cause, ordered, that all unknown stockholders, holders of the bonds issued by said companies, creditors of said companies, and all other persons interested in said several roads or railroad companies before named, enter their appearance herein at a Special Term of said Chancery Court, at Nashville, to be held on the first Monday of March, 1871, and that all of said defendants, or so many of them of the different classes as the Court may deem sufficient to represent all of each class, be required to answer the allegations of the bill on oath, and put in such defense to said bill as they may respectively deem proper under the provisions of said Act of 21st of December, 1870, or the bill will be taken for confessed, as to them, and set for hearing *ex parte;* and that a copy of this order be published for four consecutive weeks in the *Nashville Union and American* and *Republican Banner.*

(A true copy.)

Attest:

NATHANIEL BAXTER, Jr.,
Clerk and Master.

E. H. Ewing,
W. F. Cooper,
W. B. Reese,
} *Solicitors for Complainants.*

13 EXHIBIT B. TO DEPOSITION OF IRA P JONES.

Order of Publication under amended and Supplemental Bill.

STATE OF TENNESSEE,
Office Clerk and Master Chancery Court,
NASHVILLE, APRIL 15, 1871.

THE STATE OF TENNESSEE,
14 *Complainant,*

vs.

THE EDGEFIELD AND KENTUCKY R. R. Co., *et. al.*,

Defendants.

It appearing from the allegations of the original
15 and amended and supplemental bills filed in this cause, and which are duly sworn to, that the defendants Bristol, Stedman & Co., and A. L. Maxwell are now residents of the State of Tennessee, and that the names and residences of a number of the stockholders of the defendants, the Edgefield & Kentucky Railroad Company, the Nashville & Northwestern Railroad Company, the Memphis & Clarksville Railroad Company, the McMinnville & Manchester Railroad Company, the Southwestern
16 & Southern Railroad Company, the Knoxville & Kentucky Railroad Company, the Cincinnati Cumberland Gap & Charleston Railroad Company, the Knoxville & Charleston Railroad Company, the Rogersville & Jefferson Railroad Company, the East Tennessee & Western North Carolina Railroad Company are all unknown, although diligent inquiry has been made to ascertain the same, as are

also the names and residences of a number of the holders of the bonds issued by said railroad companies, and also of the holders of the bonds issued by the complainant, the State of Tennessee, to the before-named railroad companies, and also of the holders of the bonds issued by said railroad companies or any of them, and also of a number of the creditors of said railroad companies, and also that the names and residences of a number of persons interested in the said before-named roads or railroad companies are also unknown, although diligent inquiry has been made to ascertain the same. It is, therefore, in pursuance of the provisions of an act of the legislature of the State of Tennessee, passed on the 21st day of December, 1870, Entitled "An Act to amend the Act of 1870, Chapter 79, for the State's interest in delinquent railroad compänies," passed July 1, 1870, and also in further pursuance of a decree rendered by the Chancery Court at Nashville, in the above-entitled cause rendered on the 15th day of April, 1871, and of the allegation and prayer of the original and amended and supplemental bills in the cause, ordered that the said above-named defendants, Bristol, Stedman & Co. and A. L. Maxwell and all of said unknown stockholders, holders of bonds issued by the State to said companies, and other persons interested in said several roads or railroad companies before named, enter their appearance herein, on or before the seventh Monday of the present Term of this Court, being the 15th day of May next, 1871, said day being a Rule day for the return of processes and for the publication in lieu thereof, by order of the Chancellor of said Court, in pursuance of the law in such cases made and provided, and that all of said defendants, or so many of them of the different classes as the Court may deem sufficient to represent all of each class,

21 be required to appear and put in such defense to said bills as they may respectively deem proper under the provisions of said act of December, 21, 1870, or the original and Amended and Supplemental Bills will be taken for confessed as to them, and set for hearing *ex parte*, and that a copy of this order be published for four consecutive weeks in the Nashville *Union & American*, and the *Republican Banner*.

A Copy attest,

22 NATHANIEL BAXTER, JR.,
Clerk and Master.

E. H. EWING,
W. F. COOPER,
W. B. REESE,
} *Solicitors for Complainants.*

23

24

Deposition of Ex-Governor James D. Porter.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Mississippi Central & Tennessee Railroad Company,

vs.

THE CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY *et al.*

Before JOHN C. SWEENY, Notary Public in and for Henry County, Tennessee.

At Paris, Tennessee; taken in pursuance of an agreement of counsel.

Present—JAMES FENTRESS, of counsel for defendant.

EX-GOVERNOR JAMES D. PORTER, a witness produced on the part of the defendants, being by me first duly cautioned and sworn as a witness in the above-entitled suit, to testify the truth, the whole truth, and nothing but the truth, deposes and says:

5 1 Q. State your age and residence?

A. I am fifty years of age, and reside at Paris, Tennessee.

2 Q. Are you familiar with the past history, politics and policy of the State of Tennessee, particularly as to her system of Internal Improvements, and if so, please state your means of knowing,—the offices, if any, that you have held in said State, and when and whether her internal improvement system was or not a leading feature in her politics and
6 policy?

A. I am familiar with the history, politics and policy of the State; I am a native of the State of Tennessee, and have been an active participant in the affairs of the State for more than twenty years; I was a member of the State Legislature for the years 1859–60–61; was a member of the Constitutional Convention of 1870; during the year last named, I was elected Judge of the Twelfth Judicial Circuit of the State for the term of eight years, and
7 after a service of three and a half years I resigned and soon thereafter I was nominated and elected Governor of the State, and was again elected in the year 1876 for a second term; in these several offices I had much to do with the Internal Improvement system of the State, and in the construction of the laws providing for that system during my service as Governor; I was *ex officio* a member of the Board of Commissioners for the sale of delinquent railroads, and read critically all acts of the Legislature
8 relating to the subject; the settlement of the public debt of the State created in aid of the construction of our turnpike and railroad system was the hope and leading thought of my administration, and to aid in this settlement I made a careful examination of the several series of bonds to test in my own mind the propriety and validity of their issuance and the liability of the State for their payment;

during my term of office as Governor, the public 9
debt, just referred to, was the leading question discussed upon the hustings, by the Press and the Legislature; In my last message to the Legislature I stated that it was "paramount to all questions of legislation that can engage the attention of the General Assembly."

3 Q. Please state how long the Internal Improvement system has been the leading question before the Governors and Legislatures and people of Tennessee? 10

A. It was an important question from 1829 to 1834; since the last date it has been a leading question before the people and in the legislature; the Constitution of the State, adopted in 1834, enjoined the establishment of an effective system of Internal Improvement.

4 Q. Please give an outline of the different schemes which were discussed before the people and in the Press and by the Legislature of the State of Tennessee for carrying out the Internal Improvement 11
system of the State?

A. The first scheme discussed and adopted was the one inaugurated in 1829, providing for the appointment of six Commissioners of Internal Improvement, who were to determine what improvements were necessary, and what amount of money should be appropriated; this scheme continued in force until 1834, when a new constitution was adopted; under its provisions the public demanded a new system, which was provided by the Act of 12
1835, authorising the construction of railroads and turnpikes, and making the State a stockholder to the amount of one-third of the stock, payable in bonds of the State, in cases where the balance of the stock was subscribed by the company; by the act of 1837–8, the State took half of the stock in the improvements thereafter made, upon the same terms as provided by the Act of 1835; these acts were re-

13 pealed by the Act of 1839–40; by the Act of 1847–8 the State was authorized to aid Internal Improvements upon terms therein prescribed by endorsing the bonds of such companies as brought themselves within the provisions of the act. This act continued in force with some slight modifications until 1851–2, when in response to a public sentiment that had been aroused to a point of enthusiasm, a general system of Internal Improvements was provided and the railroad system of Tennessee created.

14 5 Q. Why, if you know, was each scheme abandoned and its successor adopted. Particularly, why was the scheme enacted by the Acts of Tennessee of 1847–8, Chapter CLXIX, Section 2, *et seq.*, modified by Acts of 1849–50, Chapter XLII, Section 11, *et seq*, and abandoned by Acts of 1851–2, Chapter CLI?

A. The schemes provided from 1829 to 1851–2 were abandoned as soon as they were fairly tested, because they failed to meet their promise or the

15 expectation of the country. The scheme of 1847–8, was abandoned because no market could be found for endorsed bonds at anything like their par value.

6 Q. State if you know what was and has been the practical construction by the State of the Acts of 1851–2; please answer fully?

A. The construction given to this Act by the State authorities, and by all departments of the State government has been uniform; the said Act provided for a sinking fund, to be paid by the several

16 roads to which State aid had been granted, to be used in retiring the debt thus created; under this Act the sinking fund could be, and was, paid for several years in any of the bonds of the State; the bonds issued by the State to rebuild the roads after their destruction during the late war were accorded the same dignity as the bonds issued to build the roads

before the war, and the same lien is fixed by Statute upon the roads in favor of the State for both series; the State claimed and exercised the right of selling the delinquent roads without regard to the holders of the bonds, and reserved the right of doing anything necessary to protect the interest of the State; under said Act there is no provision to distingush the bonds issued to one road from those issued to any other road, and in cases of the sale of railroads or the payment of money by Receivers, the proceeds have in every instance been turned over to the State without regard to the holders of the bonds of the State.

7 Q. Have you been acquainted with the market value of bonds of the State of Tennessee since 1851-2?

A. I am, and have been acquainted with the market value of our State bonds since 1851-2.

8 Q. Please state what difference, if any, was made in the money markets between Tennessee bonds:

(1) Issued to build the capital;

(2) To buy the Hermitage;

(3) To the Union Bank;

(4) To the Bank of Tennessee;

(5) To Agricultural Bureau;

(6) To Turnpike Companies; and

(7) To Railroad Companies?

A. There has been no difference in the market value of the several series of bonds named in the interrogatory, except in the instance where the

21 bonds carried only five per cent. interest, which was true of some of them; generally they carried six per cent.; all bonds carrying five per cent. were of of equal value, and all carrying six were of equal value.

9 Q. Has there ever been any difference in value in the money markets between State bonds issued in aid of insolvent railroads and those issued in aid of solvent railroads; or between bonds issued to build the Capital, buy the Hermitage or to
22 establish the Agricultural Bureau, and either of the before mentioned bonds?

A. The bonds issued to solvent and insolvent railroads enjoy the same dignity, and there has not been the slightest difference in their market value, and both have rated in the money market at the same price as the bonds issued for the building of the State Capital; those for the purchase of the Hermitage, and those issued to the Agricultural Bureau.

23 10 Q. Do you know any railroad to which State bonds were issued which was not at the time of such issuance, or at any time since, worth the amount of the bonds issued to it; if so, give an instance; also give an instance, if there is any, in which a railroad was worth the amount of bonds issued to it at the time of such issuance and has so continued ever since?

A. The Tennessee & Alabama Railroad, the McMinnville & Manchester, the Tennessee & Pacific,
24 the Knoxville & Charleston, the Rogersville & Jefferson, the Knoxville & Kentucky, the Cincinnati, Cumberland Gap & Charleston, the East Tennessee & Western North Carolina Railroads, were never worth the amount of bonds issued to them respectively by the State, or half of the amount issued; the Louisville & Nashville, the Mississippi & Tennessee, the Nashville & Chattanooga, the Mem-

phis & Ohio, and the Nashville & Decatur, are in- 25
stances of railroads that have at all times been considered of equal or of greater value than the amount of bonds issued to them respectively by the State of Tennessee.

11 Q. Has the State of Tennessee ever defaulted in the payment of interest on all her bonded indebtedness; if so, when, and for how long?

A. The State defaulted on the interest due during the late war, and upon all instalments of interest upon the entire bonded debt (except small amounts 26
held by educational and charitable institutions) with the exceptions of about four millions ($4,000,000) of dollars of interest paid during the years 1866–7–8–9, and the instalments maturing July, 1874, January, 1875, and July, 1875.

12 Q. After the State of Tennessee had been in default on her interest, was there not at any time a difference in the market value of bonds issued to solvent railroads, and those issued to insolvent railroads, or those issued to build the capital? 27

A. The default of the State did not affect the relative value of the bonds issued by the State for any purpose or enterprise.

13 Q. Did you ever hear prior to or during your administration as Governor of Tennessee, of any holder of bonds issued by the State in aid of railroads claiming or intimating that he claimed that such bonds were a lien on the railroads to which they were issued; if so, who, and when?

A. No such claim or demand was ever made, and 28
I never heard that such a claim was made until about the time of the institution of this suit.

14 Q. How long prior to the institution of this suit did you hear of such claim of lien?

A. Within a few weeks.

15 Q. Did you, while Governor of Tennessee, have

any correspondence with the holders of Tennessee bonds, and if so, did they not in such correspondence claim that their bonds were secured by a lien on the railroads to which they were issued?

A. I had an extensive correspondence with the holders of our State bonds; not one of them intimated an opinion that the railroads were in any event liable for the bonds issued to them, or that a lien was reserved on the roads for their payment.

16 Q. Did the State at any time institute legal proceedings to enforce the lien which she reserved in her Internal Improvement laws against any railroad on account of the aid furnished it, if so, when; and were said roads sold, and if so, what roads, and when?

A. In January, 1871, the State filed a bill in the Chancery Court at Nashville, against the Edgefield and Kentucky, the Nashville and Northwestern, the Memphis, Clarksville and Louisville, the McMinnville and Manchester, the Winchester and Alabama, the Southwestern or Southern, the Knoxville and Kentucky, the Cincinnati, Cumberland Gap and Charleston, the Knoxville and Charleston, the Rogersville and Jefferson, and the East Tennessee and Western North Carolina Railroads to enforce the lien reserved by the State for the bonds issued to them respectively; sales of these roads were made at different times during the next few years succeeding the date of the filing of the bill; the last sale was that of the Knoxville and Charleston Railroad, made under my own direction in the year 1876.

17 Q. When these railroads were sold, how were the proceeds of sale disposed of by the State; state also whether any bondholder claimed that such proceeds ought to be applied to payment of his bond?

A. The roads were paid for by their purchasers in any of the bonds of the State, and they were cancelled and filed in the office of the Comptroller of the

Treasury ; no bondholder claimed proceeds of these 33
sales for any purpose.

18 Q. How was the Tennessee Pacific Railroad disposed of by the State, was it sold ; if not, what arrangement was made as to it ?

A. The Legislature passed an Act relinquishing the lien of the State on the Tennessee and Pacific Railroad on the payment of three hundred thousand dollars ($300,000) in the bonds of the State ; one hundred and fifty thousand dollars ($150,000) in bonds was paid when the contract was made, and 34
in the year 1876 it was sold under my direction to the highest bidder at public out-cry for the balance of one hundred and fifty thousand dollars and interest, and was paid for in the bonds of the State.

19 Q. Have you any interest in the bonds of the State of Tennessee or in the stock of any railroad ; state also whether you had, while Governor of Tennessee, any bonds of the State of Tennessee or any stock in any railroad ?

A. I have no interest in Tennessee bonds, neither 35
have I in the stock of any railroad, and did not have during my terms of office as Governor.

20 Q. State, if you know, whether the State of Tennessee, under her Internal Improvement laws, took possession of any railroad in Tennessee by Receivers, and if so, when, and what roads ?

A. Receivers were appointed for the Nashville and Northwestern, the Edgefield and Kentucky, the Mississippi Central, the Memphis, Clarksville and Louisville, the Cincinnati, Cumberland Gap and 36
Charleston, the Knoxville and Charleston, the Knoxville and Kentucky, the Winchester and Alabama, the McMinnville and Manchester, the Rogersville and Jefferson Railroads ; I cannot now answer as to the date of the appointment of Receivers, but all of the roads mentioned were in the hands of Receivers for several years except the Mississippi Central, and

37 they were so held and operated until they were sold under a decree of the Chancery Court at Nashville under proceedings instituted in 1871.

21 Q. State whether the State in the selection or appointment of any Receiver to take charge of a railroad under her Internal Improvement laws, in any way consulted with any holder of her bonds as to the propriety of such step?

A. I am satisfied that no holder of any bonds of the State was ever recognized as being interested
38 in the question, and that none of them ever claimed the right of making a suggestion as to the duty of the State; in the case of the Mississippi Central Railroad, the Receiver was appointed upon my own motion, as a means of protection to the State; no holder of the bonds of the State was consulted; no one of them advised me or suggested what course to pursue, and as payments were made by the Receiver, the amount of them was passed into the Treasury without any expression of dissent or ap-
39 proval from the holders of our bonds.

22 Q. When you appointed a Receiver of the Mississippi Central Railroad, how many of the bonds claimed to have been issued to it and the Mississippi Central and Tennessee Railroad by the State were then outstanding? If you cannot state how many exactly, give as near as you can the amount?

A. A large number of the bonds issued to this road—about half of them—had been cancelled, when the Receiver was appointed.

40 23 Q. Did you appoint the Receiver and seize and hold the Mississippi Central Railroad for the amount of unpaid outstanding bonds or for the whole amount of all the debt created by the issuance of State Bonds to such road, without regard to whether the bonds issued to such road had been paid in to the State and cancelled or not?

A. In dealing with this road I paid no attention to

the fact that about half of the original issue had been cancelled; the cancelled bonds had been paid in on the sinking fund account of this and other roads or paid in by other railroad companies, turnpike companies or others, in satisfaction of debts due from them to the State; and when final settlement was made by the purchaser of this road, the debt of the State, being the amount of the bonds loaned to this Company, amounting to one million one hundred and ninety-nine thousand one hundred and eighty dollars ($1,199,180) principal, with the interest, was paid to the State in State Bonds. 41 42

24 Q. Did or not the State authorize sureties on the bonds of defaulting officers of the State to pay into the State any of her outstanding bonds and coupons? And, if so, were any State Bonds so paid in?

A. This authority was accorded by the Acts of 1875 and 1877 to sureties of defaulting revenue officers; a considerable number of bonds were paid in and cancelled under this authority; these payments were made in any series of registered or funded bonds. 43

25 Q. Did the State by its Receiver in charge of the Mississippi Central Railroad collect any amount of money above its running expenses? And if so, what amount?

A. The State collected from the Receiver of this road one hundred and ten thousand dollars ($110,000) in currency over and above running expenses? 44

26 Q. What was done with said $110,000? Did the State hold it as a trust fund?

A. It was passed into the State Treasury as ordinary revenue, and used and appropriated in the same manner. No trust relation was recognized by the State authorities in connection with said fund.

45 27 Q. Did you as Governor of Tennessee call public attention to the fact that said $110,000, or any part thereof had been collected by the State in money from said railroad? And if so, how and when?

A. In my message to the Fortieth General Assembly of the State, delivered January 1st, 1877, I communicated the fact that the Mississippi Central Railroad had defaulted on two installments of interest due on the bonds loaned to the Company by
46 the State, and that I had appointed a Receiver, who had taken possession of the road, and that he had up to that time paid into the Treasury of the State sixty thousand dollars ($60,000) in currency. This message was copied very generally by the newspapers of Tennessee and by a number of leading papers out of the State.

28 Q. Had the holders of Tennessee Bonds been in correspondence with you at or before that time? And if so, state whether you made any mention of
47 such correspondence in the same message in which you mentioned the appointment of a Receiver of the Mississippi Central Railroad, and the payment by him as such of $60,000 to the State, as stated in your last answer?

A. I had been in correspondence with the holders of our bonds, and in the message referred to in last answer I communicated a part of this correspondence to the Legislature.

29 Q. Please file as part of this your deposition
48 said message?

(A. The message is filed herewith, marked "Exhibit 1, J. D. P.")

30 Q. I see on page twelve of said printed message that you state "Negotiations are now pending "by which the past due interest and sinking fund "due from this Company, and possibly the princi- "pal not yet due, will be paid at an early day."

Now please state whether the said message came to 49
the knowledge of the holders of Tennessee Bonds, if you know, and particularly, whether the said message came to the knowledge of the complainant, C. Amory Stevens?

A. This message did come to the knowledge of many of our creditors; I know it from the fact that in February, after its delivery, I received a communication signed by C. Amory Stevens, and more than twenty others, submitting through me to the Legislature and people of Tennessee a series of 50
propositions looking to an adjustment of the State debt, in which they propose that certain reforms recommended in said message be enacted into a law.

31 Q. Will you please file said written communication as a part of this your deposition?

A. I file the communication; marked "Exhibit 2, J. D. P."

32 Q. Did complainant (C. Amory Stevens) or any other bondholder request you, as Governor, to set apart said $60,000 to the payment of the bonds held 51
by them or in any way intimate that they, as such holders, had any claim on said fund or any fund realized from the Mississippi Central Railroad under the State Receivership? If so, state it?

A. Neither C. Amory Stevens nor any other creditor of the State ever made any request or suggestion in relation to said fund. These parties were treating with the State as their debtor, and never intimated then or at any subsequent period during my administration that the State held the relation of trustee or 52
thatthey had any claim upon said fund.

33 Q. Did you mention the fact that the Internal Improvement Debt of the Mississippi Central Railroad had been paid to the State in any of your public messages to the Legislature? If so, when? State also whether such message was brought to the attention of the holders of Tennessee bonds, if you know?

53 A. I communicated the fact, that the debt of the Mississippi Central Railroad had been paid to the Legislature in a message of December 5th, 1877, and in another message of January 6th, 1879; the Legislature was convened in extra session on the 5th December, 1877; I was in correspondence with our creditors before this call was made, and the leading ones were generally advised of my purpose to make it; Messrs. Eugene Kelly, E. D. Morgan and Company and others requested me by letter
54 to make the call, and I take it that they read my message; it was generally published.

34 Q. You speak of a very extensive correspondence between you as Governor and the State authorities of Tennessee with the holders of Tennessee bonds; please state whether they made any proposition of settlement of the whole bonded debt of the State? And if they made more than one proposition, state each, with a short chronological history of whether such proposition was entertained or
55 acted on by the State or its authorities?

A. Immediately after my inauguration as Governor in January, 1875, the creditors of the State commenced a correspondence with me in relation to the public debt; after the default was made in the payment of the interest in July of that year, this correspondence increased in volume and in interest, until the 20th of December, 1876, a number of the leading creditors of New York addressed a letter to me, asking me to recommend the appointment of a
56 commission to visit New York to confer with holders of Tennessee bonds with the view of an adjustment of the debt; I made this recommendation to the Legislature; after some hesitation and delay, and a second appeal by creditors (dated 15th February, 1877), the commission was appointed by the Legislature; this commission visited New York, and on the 8th March, 1877, met with a committee of arbi-

ters appointed at a meeting held at the Clearing 57
House on the 20th of January, 1877, and after a discussion by the two committees, the arbiters recommended an adjustment of the State debt at the rate of sixty per cent. of the total amount, and forwarded their recommendation in writing to me; after ascertaining that this recommendation for settlement was acceptable to the creditors, upon the completion of the assessment of the property of the State for taxation, I convened the Legislature in extra session, and submitted this proposition and recommended its 58
adoption with the utmost earnestness in a message dated the 5th of December, 1877, which is filed herewith as "Exhibit No. 3, J. D. P.;" after a delay of several days by the Legislature in discussing this proposition, it was clearly demonstrated that it would be rejected, and that the body would adjourn without accomplishing anything; about the 10th of December several creditors appealed to me to submit a proposition for settlement at the rate of fifty per cent. of the whole debt; I hesitated, fearing 59
that this propostion would not be acceptable to the creditors; the following day I received a telegram from C. Amory Stevens, one of the large holders of Tennessee bonds, urging me to submit the fifty cent settlement to the Legislature and assuring me that it would be acceptable to the investment holders of our bonds; thereupon, I intimated a request to the Legislature to adjourn, and immediately convened that body in extra session a second time, submitted the last-named proposition and recommended 60
its acceptance in a message dated December 12th, 1877; said message is filed herewith as "Exhibit No. 4, J. D. P.;" the Legislature adjourned without making the settlement and during the remainder of my official term I maintained a correspondence with the creditors of the State.

35 Q. Did any of the New York holders of State bonds come in person and visit you or the Legisla-

61 ture of Tennessee at Nashville in the fall or winter of 1877? If so name some of them and state if you know what was their business in Nashville at such time; state also if you know whether they personally urged legislation looking to a settlement of all the bonded debt of the State?

A. There were several holders or representatives of holders of Tennessee bonds present at Nashville in December, 1877, during the sessions of the Legislature mentioned in my answer to last interrogatory;
62 I do not remember the names of any of them except that of Mr. P. Geddes; they were here to aid as far as they could in effecting a settlement of the State debt.

36 Q. Do you mean by "P. Geddes," Peter Geddes, of New York, member of the "Committee of Tennessee Bondholders," and member of the firm of Geddes & Smith? And if so, was he in conference with you at said time? State also whether he was or not fully advised on the condition of the bonded
63 debt of the State, and particularly whether he knew of the proposed settlement of the Internal Improvement Debt of the Mississippi Central Railroad to the State, if you know?

A. In referring to P. Geddes in answer to last interrogatory, I allude to Peter Geddes, of the firm of Geddes & Smith, of New York City; he was in daily conference with me at the time of his visit; he was well informed in all matters relating to the State debt, and I conferred with him with perfect frank-
64 ness; he was fully advised of the proposed settlement of the debt of the Mississippi Central Railroad—indeed the first intimation I had of a purpose to discharge this debt within a certain fixed time came from Mr. Geddes in a letter from him to the Comptroller of the Treasury which was sub, mitted to me.

37 Q. Are the letters and telegrams from holders of Tennessee bonds incorporated with your messages

of December 5th, and December 12th, 1877, true 65
copies of such letters and telegrams?

A. They are.

38 Q. Please state whether the letters signed by Mr. Geddes and dated August 1st, 1877, August 23d, 1877, August 27th, 1877, and August 29th, 1877, addressed to James L. Gaines, or James L. Gaines, comptroller, were ever seen by you? If so, when and under what circumstances. Please also file a true copy of each of said letters, as part of your deposition? 66

A. The letters named in the interrogatory from Mr. Geddes were received in due time by mail, and immediately submitted to me; the several answers to them were written at my request, and first submitted to me for approval; true copies of said letters are filed herewith as "Exhibits No. 5, 6, 7, 8, J. D. P."

39 Q. In the letter of August 27, 1877, Mr. Geddes refers to an interview which he had just had with Mr. Osborn. What Mr. Osborn did you understand 67
he referred to in said letter, and what connection, if any, did he have with the purchasers of the Mississipi Central Railroad?

A. I understood him to refer to W. H. Osborn, president of defendant, the Chicago, St. Louis & New Orleans Railroad.

40 Q. In the letter of Geddes and Smith and E. D. Morgan & Co., of February 23d, 1877, addressed to you as Governor, it was suggested that the debtors of the State be required in "a reasonable time, say 68
by or before July 1st, 1877, to pay off every obligation due from them to the State as they may now do," etc. What debtors and obligations does this refer to? Please make a true copy of said letter a part of this your deposition.

A. The reference was to the railroads to which bonds for their construction or equipment had been

69 loaned; I file a copy of the said letter, marked "Exhibit 9, J. D. P."

41 Q. In Peter Geddes' letter of August 27th, 1877, aforesaid, he refers to the paying off the lien of Tennessee on the Mississippi Central Railroad, and states that there was little doubt that the last of Tennessee's advances to railroads would be paid off that fall, and that it was quite well understood in New York, "thus freeing her, and her creditors too, for that matter, from a very troublesome disorder."

70 Please state whether from your interviews and correspondence with holders of Tennessee bonds they intimated any objection to railroads paying off the State's lien on account of Internal Improvement aid, or whether they favored it?

A. No objection was ever made by the holders of Tennessee bonds to the settlements made by the State with the railroads; on the contrary, my understanding derived from my correspondence with them was that they agreed with me in the importance of

71 a settlement with all the roads at the earliest day.

42 Q. Did the complainant, Calvin Amory Stevens, have any correspondence with you? If so, please file copies of such letters, circulars, etc., as he sent you in February 1, 1877, January, 1878, and December, 1877, at the time the special sessions of the Legislature were in session. Please file the original circulars, if any, and the envelopes in which such were enclosed, and make such letters and circulars Exhibits to this your deposition?

72 A. The first communication from complainant is dated February 15, 1877, and is "Exhibit 2" to this deposition; the next is incorporated in "Exhibit 4" of this deposition, and is dated December 11th, 1877; the next two are dated December 15th, one a letter, the other a telegram; they are here filed as "Exhibits 10 and 11, J. D. P"; the next is a circular, dated July 19, 1878; I mark said circular with the en-

velope in which it was received as "Exhibit 12, J. D. P"; the next is a letter of January 25th, 1878, marked "Exhibit 13, J. D. P," enclosing certain newspaper clippings with headings in complainant's handwriting, which are here filed as part of the last-named exhibit. 73

43 Q. Did you acknowledge receipt by letter of complainant's letters of January 24th and 25th, 1878, if so, file a copy of such letter?

A. I answered said letters; a copy of my answer is here filed as Exhibit 14, J. D. P. 74

44 Q. You refer in Exhibit 14 to a letter of 24th January, 1878, written by complainant to you; please file said letter and also copy of your letter of 19th January, 1878, to Mr. Manning, to which you refer, which you say was furnished complainant.

A. I file copy of letter to Mr. Manning, marked "Exhibit 15, J. D. P.," and copy of letter from Mr. Stevens, marked "Exhibit 20, J. D. P."

45 Q. The complainant in his deposition states that he got two of the bonds sued on from John B. Manning, in fall of 1878; did said Manning have any correspondence with you? if so, please file copies of his letters? 75

A. I had correspondence with John B. Manning; I file three letters from him, marked "Exhibits 16, 17, 18, J. D. P."

46 Q. Did you have correspondence as to the State debt with other holders of her bonds than those mentioned hereinbefore? 76

A. I had correspondence with many other holders of Tennessee bonds; a large number of letters and telegrams from them in relation to the State debt are on file at the State Capitol.

46 Q. After you had appointed a receiver of the Mississippi Central Railroad were there any propositions to settle with the State by any party; if so, state each and what the State did as to them?

77 A. J. B. Alexander was appointed by the United States Courts of Tennessee, Kentucky and Louisiana Receiver of this road embracing the entire line from Cairo, Illinois, to New Orleans; there was a decree entered in the United States Court at Memphis, authorizing him to pay the defaulted interest to the State; he proposed to pay it, and tendered his check for it; I refused to receive the money and continued to operate the road through the State Receiver until the entire debt, principal and interest,
78 was paid.

48 Q. Did you as Governor of Tennessee make any representations to the purchasers of the Mississippi Central Railroad prior to their purchase as to the debt and lien claimed by the State on said road under her Internal Improvement Acts; if so, state them?

A. The purchaser was informed in advance of the purchase that the State had an exclusive lien on the Tennessee part of the road for the payment of the
79 amount of the bonds loaned to the company, and that under our law, the purchaser could be substituted to the rights of the State upon the payment of the debt; I also informed him that the debt would be paid in Tennessee bonds; at the same time the purchaser was notified that I would not surrender the possession of the road until the entire bonded debt was paid; under our Internal Improvement Acts, the stockholders of the company could recover possession of the road from the State by
80 paying the defaulted interest, but this right did not belong to any of the other parties who were demanding the surrender of the road, and I employed this power to coerce the purchaser to pay off the entire debt.

49 Q. Did you as Governor make any suggestion or representation to said purchasers before the pur-

chase of the Mississippi Central Railroad as to sub- 81
stitution of mortgage bonds to the lien of the State? if so, state it.

A. I discussed the question of substitution with the representatives of the purchasers, and stated, pending negotiations for the purchase, that mortgage bonds could be issued by the purchaser and substituted to the lien of the State.

50 Q. Please examine acquittance and assignment here handed you and state whether you, as Governor of Tennessee, and Charles N. Gibbs, as 82
Secretary of State, executed and delivered the same on the day it bears date to the trustees named in the mortgage made by the Chicago, St. Louis and New Orleans Railroad Company, the defendant, on Nov. 8, 1877?

A. The acquittance and assignment mentioned in interrogatory was executed by myself, as governor, and Chas. N. Gibbs, as Secretary of State; at the time it bears date.

51 Q. Please make an Exhibit of said acquitt- 83
ance and receipt to your deposition?

A. I file it herewith marked, "Exhibit 19, J. D. P."

And further deponent sayeth not.

(Signed) JAMES D. PORTER.

STATE OF TENNESSEE, }
County of Henry. }

I, JOHN SWEENY, notary public, do hereby certi- 84
fy that the foregoing deposition of thirty-nine pages was taken by me as stated in the caption, and that each answer of the witness was written by myself, and that said witness, J. D. Porter, made oath before me in due form of law, that said deposition

85 was true and signed his name thereto in my presence.

In witness whereof, I have hereunto set my hand and notarial seal this the twenty-fifth day of March, 1880.

[SEAL]

JOHN C. SWEENY,
Notary Public.

My fee, one dollar.

86 JOHN C. SWEENY, *Notary.*

87

88

EXHIBIT No. 1.—J. D. P.

MESSAGE OF JAS. D. PORTER, GOVERNOR OF TENNESSEE, TO THE FORTIETH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE.

MESSAGE.

Gentlemen of the Senate and House of Representatives:

Assembled in obedience to the laws of Tennessee, 90
to perform the legislative functions of the State Government, you will not, I am confident, be unmindful of their magnitude, or wanting in wisdom or courage for their performance; your action will affect all the great interests of our people, and I promise executive co-operation in all measures you may devise for their relief.

FINANCIAL CONDITION OF THE STATE.

The funded and registered bonds outstanding, 91
amount to $22,812,400; the bonds belonging to East Tennessee University, not required to be registered, amount to $396,000; the fundable bonds and coupons not presented, amount to $1,021,000; the past due interest amounts to $2,088,756; these sums constitute the State debt, and amount to $26,310,156; from this sum is to be deducted $1,671,916, loaned to the Memphis and Charleston Railroad; $1,199,180, loaned to the Mississippi Central Railroad; $316,774, loaned to the Mississippi and Tennessee 92
Railroad; $14,150, due from purchasers of the Tennessee and Pacific Railroad; $51,125, due from purchasers of Knoxville and Charleston Railroad, and $204,000, due from purchasers of the McMinnville and Manchester Railroad, aggregating $3,458,145, all of which will be paid, leaving as the debt to be provided for, $22,852,011, less $95,636.10, interest

93 from solvent railroads due January 1st, 1877. The outstanding warrant account amounts to $129,060.21, and there is in the Treasury the sum of $139,332.19, in cash, with taxes due and uncollected, amounting to $1,570,659.50.

For a statement in detail of the financial condition of the State, reference is made to the comprehensive reports of the Comptroller and Treasurer, which are herewith transmitted. It will be observed that in the two
94 years past a material reduction has been made in the current expenses of the State, and the estimate made by the Comptroller for the next two years shows that a further reduction will be made; these estimates are based upon existing statutes. In considering this subject, the fact must be remembered that the shrinkage in values has reduced the assessment roll in two years $20,425,835, causing a reduction of $81,703.34 per annum in the revenues of the State; this reduction in values is not alarm-
95 ing; the taxable property of the State is now $268,002,485; this is only four millions and a fraction of a half less than it was in 1872; it is nearly sixteen millions more than it was in 1870, and is forty-five millions more than it was in 1869, and fifty millions more than it was in 1868.

The borrowed money account due at my inauguration, the warrant account, the interest on the school fund, and the interest on bonds of the State held by schools and colleges, has been paid from the
96 revenues of the State. In June preceding the maturity of the interest on the bonded debt, due July 1st, 1875, after it had been ascertained that it was impossible to meet it out of the revenue of the State, under my direction the Comptroller of the Treasury undertook to negotiate the loan of a sum sufficient for that purpose; the terms offered to the State were harsh and unreasonable, and the interest

demanded was so exorbitant that it was determined 97
by the executive officers to let the payment go by default, and to rely for the future upon the revenues of the State; since that time no money has been borrowed for any purpose. Default was again made in the payment of the interest due January 1st, 1876, and again for the interest due July 1st, 1876, and again for the interest due January 1st, 1877. When the money for the payment of the interest due July 1st, 1874, and January 1st, 1875, was provided, there were balances amounting to about $60,- 98
000 not presented at the time, and the payment of these balances was deferred until September 15th, 1876; in the preceding month the Comptroller of the Treasury, under my direction, announced the readiness of the State to pay these balances at that time, together with the installment of interest due July 1st, 1875; the Treasurer commenced the payment at the time appointed, and all the coupons of bonds registered to that date that have been presented have been paid. 99

The present rate of taxation will not pay current expenses and meet the interest on the State debt, and the determination on the part of the people is fixed and settled not to increase it. This conclusion results from a want of ability on the part of the taxpayer. The creditors of the State realize the magnitude of our difficulties, and will make such a concession as will make future interest payments easy and certain. Their readiness to adjust the debt is disclosed in the following communica- 100
tion:

"NEW YORK, December —, 1876.

"To His Excellency JAMES D. PORTER,
Governor of Tennessee:

SIR:—The undersigned holders of bonds of the State of Tennessee, believing that the

best interests of Tennessee, and of her public creditors, will be served by an early permanent adjustment of the claims of such creditors, on a basis honorable to the State and equitable to them, respectfully ask your Excellency, in the full belief that such a settlement is practicable, to recommend that the Legislature of Tennessee, as early as may be possible at its ensuing session, appoint a commission to come to this city and confer with the holders of bonds of the State of Tennessee, for the purposes mentioned herein.

"We remain your Excellency's most ob'd't servants,

"GEO. SMITH, London, England,
by GEDDES & SMITH, Agents, etc.
"BROWN BROTHERS & Co., Agents.
"DREXEL, MORGAN & Co., Agents.
"E. D. MORGAN & Co.
"WARD, CAMPBELL & Co.
"JAMES G. KING'S SONS,
Agents for Holders.
"GEORGE W. STANTON.
"P. GEDDES."

These parties represent several millions of dollars of the bonds of Tennessee, and are gentlemen authorized to speak and act; and I am assured, from my correspondence with other creditors of the State, that this proposition will be generally acceptable. I earnestly recommend the adoption of the suggestion for a conference with the creditors of the State. The proposition comes from the largest holders of Tennessee bonds. It had its origin with them, and the State can enter upon the negotiation with confidence, and without a sacrifice of her good name. It is of the first importance to the State that this vexed

question shall be settled and removed from the politics of the State. It is the one great barrier to present and future prosperity. 105

Criminal Expenses.

I renew the recommendation made two years ago to the Thirty-ninth General Assembly, for the passage of an Act requiring the several counties to pay their own criminal expenses. The State has paid for this purpose, during the two years past, the sum of $389,585.63, and during the continuance of 106
our present system there can be no material reduction. Tennessee is one of five, out of thirty-eight States of the Union, where criminal prosecutions are made a charge upon the State Treasury; in thirty-three of them the counties where crimes are committed pay all costs, and the result in these thrty-three States is that the local officers are more active and vigilant in preventing extravagant charges, and I am satisfied that where local responsibility is provided, that bills of cost will be subjected to a scru- 107
tiny they cannot now receive; the Comptroller of the Treasury, in auditing these bills of cost, is only required by law to see that the several items are taxed in accordance with the Statute; if they were referred to the County Judge, or Chairman of the County Court, the necessity for their creation would be discussed, and, it is believed, the criminal law will be administered with more economy, and, by bringing the subject directly before the people, they would stimulate greater vigilance on the part of 108
officials, and require the punishment of criminals to be made with promptness. In cases where rewards are offered by the Governor for the capture of escaped criminals from the County Jails, if the counties were required to pay the reward, it would secure the construction of safe prisons, and more watchfulness on the part of the keepers.

109 THE INFERIOR COURTS.

There are thirty-six Judges of the Inferior Courts of Tennessee. In the neighboring State of Kentucky, with a population greater than our own, with the same character of people, there are twenty-four; compared with the other adjoining States, the inequality is against us in a greater degree. Something is doubtless due to the errors of our system, still it is clear that the inferior courts of the State are too numerous for the amount of business now
110 on their dockets. During the past year I caused circular letters to be addressed to the clerks of these courts, for the purpose of ascertaining the number of causes tried within twelve months, with the number and character of those docketed and undisposed of; about one-third of the clerks responded to these inquiries, and facts sufficiently numerous were elicited to show that a number of courts can be abolished without detriment to the public service.

The statements made by the clerks will be placed
111 before you.

COST OF LITIGATION.

Citizens of the State complain that the cost of litigation is so considerable, that they are in many cases deterred from asserting their rights in the courts of the State; the complaint is a well-founded one, and I know of no more acceptable service to the public than the correction of this evil; costs paid by litigants in the courts of Tennessee are fifty
112 per cent. in excess of the costs paid by citizens of several of the adjoining States for the same service, and are unreasonable and excessive, and ought to be reduced.

FEES AND PERQUISITES.

I renew the following recommendation made in my message to the 39th General Assembly: "Much

complaint is made by the taxpayers of the State at 113
the amount of fees and perquisites received by many officeholders in Tennessee. The compensation of all public servants should be reasonable, but no place should have attached to it such an income as will justify the employment of corrupt means in obtaining it, and I recommend the passage of a general law, limiting the incomes of all officials to a certain amount, and providing that all fees in excess of the prescribed limit shall be paid into the public treasury. 114

ARBITRATION COMMISSION.

Hon. S. W. Cochran, of Obion County, L. D. McKissick, Esq., of Shelby County, and Howell E. Jackson, Esq., of Madison County, were appointed and commissioned as a Special Commission, under the Act approved 18th February, 1875. In spite of the industry of the Judges of the Supreme Court, and the valuable labors of the Courts of Arbitration for Middle and West Tennessee, the business of the 115
Supreme Court continues to accumulate; under our present system of practice it is uncertain when the docket of this Court can be heard. The number of causes already filed at Nashville would occupy the Court for a year. It is needless to remind you of the fact that this state of things is the reasonable cause of much complaint, and that relief is demanded and expected by the country, not by another resort to temporary and expensive expedients, but by such a change of practice as will secure the citizen 116
against a recurrence of the present state of the docket. The transcript of the records of causes appealed to the Supreme Court are made voluminous by the incorporation of all records and the statement of all facts, material or otherwise, used in the Court below; the result is, that the larger part of the time of the Supreme Court is occupied in read-

117 ing and hearing a discussion of issues not pertinent, when if appellants were required by law to assign reasons for the appeal, by making a simple assignment of errors, the Court would always be advised of the issue involved in the litigation, and would be able to dispatch double the amount of business, and at an immense saving to the taxpayers; the adoption of this suggestion and the re-enactment of the Statute annexing a penalty by way of damages to appeals from judgments for money, will discourage
118 appeals that are not meritorious.

Legislative Expenses.

Modern legislation has quadrupled the pay of the principal Clerks of the two Houses of the General Assembly for preparing the indexes for the journals and for copying and preparing the same for the printer, without a reason for this increased expenditure. The old standard of compensation was a liberal one, and I recommend a return to it.
119

Schools for the Blind and Deaf and Dumb.

The annual appropriation of five thousand dollars to each of these schools is no longer necessary; the per capita allowance of two hundred dollars per annum to the pupils of the State, is ample for the support of these schools.

Immigration.

120 I submit the report of the Commissioner of Immigration. The resources and advantages offered by Tennessee to the immigrant and to the capitalist have been generally and very intelligently advertised during the past two years, resulting in the investment of a large amount of money in our State; many immigrants have been induced to come to the State; they are generally people of substance, who

have been attracted by its fertile soil and genial climate. The people have co-operated with the State officials in encouraging immigration, and their own peaceful and hospitable disposition has furnished the argument and the inducement to come to Tennessee. 121

I recommend the repeal of the act appropriating two thousand dollars to the Bureau of Immigration, and the passage of an act requiring the Commissioner of Agriculture, Statistics and Mines to perform the duties of Commissioner of Immigration, without additional compensation. 122

APPROPRIATIONS.

I renew the following recommendation made to your predecessors: "Comptroller Burch, in his report to my predecessor, calls attention to the requirements of the Constitution, that money shall only be drawn from the treasury in consequence of appropriations made by law: *Constitution, Art.* 2, *Sec.* 24; and also to the requirements of the Code, that the Comptroller shall, at stated times, report 'the unexpended balances of the several appropriations.' Notwithstanding this provision in the Constitution, with a legislative construction clearly indicated in the Code, it is believed that specific appropriations are the exception, and that for many years the public moneys have been expended without the authority contemplated by the Constitution. If that instrument is regarded and estimates required from the executive offices, the Legislature is enabled to see what amounts may be necessary, and can place a check upon expenditures by prescribing a limit beyond which they shall not not go. The mere fact that an appropriation is to be made requires investigation of the amount necessary to be set apart for the purpose, and promotes inquiry into former as well as present expenditures, 123 124

125 while the system now practiced does nothing to insure a faithful performance of this important duty. Under the present system the Comptroller complains of the extent of the discretion practically left to him. He is to examine and adjust all accounts and claims against the State which are by law to be paid out of the Treasury: Code, 207, s. s. 1. With a proper system, nothing could be the subject of a warrant but such as had been included in some appropriation made by law." The Supreme
126 Court has declared "that an indebtedness of the State, fixed and recognized by law, was payable out of the Treasury without a specific appropriation."

Still, it is the duty of the General Assembly to make specific appropriations for the various purposes of the State, and relieve the Comptroller of the Treasury of the discretion now necessarily exercised by him.

Conventional Interest.

127 I recommend the repeal of the law authorizing a conventional rate of interest as high as ten per cent.; the law has failed to meet a single promise of its friends, and its repeal is very generally demanded by the people of the State.

The Penitentiary.

The Act of the Legislature, approved March 22, 1875, provided for a lease of the State prison and labor of the convicts for a period of five years, if
128 the highest bid offered was "satisfactory to the Governor and Inspectors." Notice of the proposed lease was duly made, and proposals invited. Only three bids were made; these were pronounced unsatisfactory, and the whole subject remitted to the General Assembly. I transmit the report of the Governor and Inspectors, with a detailed statement of their action. Subsequently I extended the lease

with the present lessees for the period of eight 129
months, for a rental of ten thousand one hundred and eighty-one dollars and seventy-five cents ($10,181.75) quarterly for eight hundred (800) convicts, and for any larger number the rent shall be proportionally increased. Said lease can be vacated by either of the contracting parties, at any time, on giving thirty days' notice in writing. A copy of the lease is herewith transmitted.

The present system of employing convict labor is wrong; but I am not certain that the general senti- 130
ment of the people of Tennessee is not in favor of it. The taxpayers have been so heavily burdened in the past with taxes levied to support this institution, that there is danger that they will acquiesce in any policy, however mistaken or mischievous it may be, that secures them from taxation. If it is determined to lease the labor of the convicts, no authority should be given to the lessees to employ the convicts outside of the prison, unless it is done where secure prisons can be provided, or upon the 131
islands of the Mississippi river, where escapes are almost impossible. It has been suggested that the State should employ the labor of the convicts in building or repairing public roads.

The State owes it to her citizens to employ this labor so as to avoid competition with the mechanics of the State; but it would be impossible to use it in the construction of roads without taxing the people heavily for their support, and for the support of a strong force as guards. Under the late lease the 132
lessees were authorized to sub-let the labor of the convicts to farmers and railroad contractors, and the result shows that a large number of them have escaped in the face of the utmost watchfulness. I can suggest no plan for the employment of this labor that is not subject to objection; but, under existing circumstances, I do not see how another

lease of the prison can be avoided. If it is done, the employment of convicts outside the prison should be restricted to the iron and coal mines; and if the lessees are required to employ all the able-bodied convicts, whose punishment will allow them to be worked outside of the prison walls, in the mines, this would embrace a large per cent. of the labor, and will almost destroy anything like competition with the mechanical labor of the State. This plan will meet with the earnest opposition of about three hundred respectable miners now engaged in mining coal; but so long as the Penitentiary system is maintained, the convicts must be employed at some manual labor, and this will bring them in competition with the fewest number, and will be productive of the good result of cheapening the price of coal and iron ore, and of stimulating the development of our manufacturing interests. The lessees should be required to receive the convict at his place of conviction. The State has paid during the past two years, for bringing convicts to the State prison, $25,005.73. The lessees move convicts from point to point at a rate more than fifty per cent. less than is paid by the State.

The lessees now pay a reward of $25 (twenty-five dollars) for the capture of escaped convicts. It will cause more care and watchfulness on their part hereafter, if they are required to offer such reward as the superintendent of the prison may decide is necessary, and be compelled to make publication of it whenever he decides that is is important.

Inspectors of the Penitentiary.

No necessity now exists for this office. The duties once required of them can be performed by the superintendent without an increase of compensation.

On the 8th of May, 1876, the Railroad Commissioners sold the Tennessee and Pacific Railroad at public outcry, to the highest bidder, to satisfy an unpaid balance due to the State, amounting to $150,000, with interest from July 1, 1870. The company became the purchaser, and has paid, through the counties of Davidson and Wilson, the sum of $178,000 in the bonds of the State, leaving a balance of $3,500 in bonds and $10,650 in cash unpaid, for the payment of which no provision has yet been 138 made.

The Knoxville and Charleston Railroad was sold by the Commissioners to Messrs. O'Conor & Co. at the price of $75,000—one-fourth in cash, and the balance in one, two and three years. One-half of the purchase money has been paid in the bonds of the State, and with the bonds received from the counties of Davidson and Wilson, have been cancelled, and are on file in the office of Comptroller of the Treasury. 139

The Mississippi Central Railroad failed to pay the semi-annual interest due on 1st July, 1875, and 1st January, 1876, on the bonds loaned by the State. On the 25th day of February, 1876, I appointed R. P. Neeley, of the County of Hardeman, Receiver, and, under my directions, he took immediate possession of the road, and has been operating it in the interest of the State. Since this road has been in the hands of a Receiver it has been kept in good repair, its running expenses paid, and the sum of 140 $60,000 paid into the Treasury of the State on account of taxes and interest. This management on the part of General Neeley occurred at a time of great business prostration, and is much to his honor and credit. Negotiations are now pending, by which the past due interest and sinking fund due from this company, and possibly the principal not yet due, will be paid at an early day.

141 MEMPHIS AND LITTLE ROCK RAILROAD.

I invite attention to the following statement of facts made by my immediate predecessor in his message to the Thirty-ninth General Assembly. It discloses the reason why I have not taken action under Resolution number 72, adopted by the same legislature, instructing the governor to institute suit for the enforcement of a claim of the State against this company:

142 "The act of the 21st of February, 1856, extending aid to the Little Rock Railroad Company authorizes the governor of the State to endorse 350 bonds of the City of Memphis, for one thousand dollars each, to be paid to the Memphis & Little Rock Railroad Company, *provided* the said Memphis & Little Rock Railroad Company should first endorse each of said bonds, guaranteeing payment of principal and interest of the same, and *provided further*, that the City of Memphis shall first, by its proper
143 authorities, execute a mortgage, giving to the State of Tennessee a priority of lien on the stock and interest of said city in said railroad company; and *provided further*, that said railroad company shall give to the State of Tennessee a prior lien upon the whole of the iron and equipments upon the first division of said road, extending from Memphis to the Saint Francis River in Arkansas, &c. Section 12 of said act provides further, 'That the said city bonds shall not be so endorsed until the proper au-
144 thorities of the City of Memphis shall provide and set apart a fund known as a sinking fund; out of which shall be paid, over and above the six per cent. interest, two per cent. per annum on the said bonds, commencing five years from that date.'

"These bonds were issued, and in 1856 and 1857 endorsed by the Governor of the State. After a careful examination of the archives of the State, I

have been unable to find any mortgage upon the 145
stock of the city of Memphis in said road, or upon the iron and equipments of the first division of said road. I have caused search to be made also in the Register's office at Memphis, and in the proper offices in the State of Arkansas, for some registration of such mortgages, but without avail, and I can find no evidence that such mortgages have, in fact, been made. The execution of these mortgages, and providing a sinking fund, were conditions precedent to the right and power of the Gov- 146
ernor to endorse said bonds, and the liability of the State did not attach in the absence of a compliance with such conditions."

I am satisfied the mortgages referred to by Governor Brown were never executed, and that the State has no lien, as is assumed in Resolution 72.

Holders of these bonds endorsed by the State have demanded payment of the past-due interest, and, without any legislative declaration on the sub- 147
ject, I have not hesitated to say the State was in nowise responsible for its payment, or for the payment of the bonds at maturity.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

I commend to your earnest consideration the report of this officer, herewith transmitted, and to his more elaborate report of a year ago, copies of which will be furnished to you. The present incumbent has been zealous and untiring in his efforts to ad- 148
vance the cause of education, to popularize the *common school*, and to teach the public that it is to that agency we must look at last for the diffusion of that noble lesson of our own State Constitution, "that knowledge, learning and virtue are essential to the preservation of republican institutions."

The reports of the Secretary of State, the Libra-

149 rian, and Superintendent of the Capitol, are transmitted for your information.

State Normal College.

Under the Act of March 23d, 1875, I appointed J. B. Lindsley, Edwin H. Ewing, Samuel Watson, R. W. Mitchell, L. G. Tarbox, and John J. Reese, as the State Board of Education. Recently J. W. Hoyte and Leon. Trousdale were appointed members of the Board *vice* Samuel Watson, deceased,
150 and L. G. Tarbox, resigned.

The Board of Trustees of the University of Nashville gave to the State Board the use of its buildings, and the school was located at Nashville.

The Board of Trust of the Peabody Education Fund donated to the school for the first scholastic year the sum of $6,000, and $9,000 for the present year. The school is now in successful operation under Dr. Eben S. Stearns, as president, with a corps of competent teachers, and is a first-class in-
151 stitution for the education of teachers. It has not been a charge upon the treasury or upon the people of the State, and furnishes gratuitous instruction to all comers. The institution is supported by the Peabody Board of Trust. This support will be withdrawn at the close of the present scholastic year, and I earnestly appeal to the General Assembly to provide the means necessary for its maintenance, not by a new levy of taxes, but by the appropriation of $10,000 of the school fund not pro-
152 vided by law. The withdrawal of that amount will add materially to the efficiency of the public school system, and will maintain an institution full of promising results to the educational interests of Tennessee. The great defect of our school system is the want of competent teachers. This school will supply this want, and furnish them from our own people.

For the history of the operations of this school I refer to the report of the State Board of Education, made to the Superintendent of Public Instruction. 153

BUREAU OF AGRICULTURE, STATISTICS AND MINES.

In transmitting the report of the Commissioner of this Bureau, I adopt the following article, taken from the editorial columns of the leading mining and manufacturing journal of this continent, *The Iron Age*, published in the city of New York: 154

"THE TENNESSEE BUREAU OF MINES.

"Of late years the attention of ironmasters, both at home and abroad, has been constantly directed to the South, and especially to Tennessee. Probably at this time there is more inquiry as to its mineral resources, from foreign capitalists, than concerning those of all the rest of the Southern States. A million dollars of British capital have already been invested within the past two years, and 155 there is a strong probability that this is but the foretaste of other millions. For this result the State is indebted to its wonderful resources, but also in a large degree to Col. J. B. Killebrew, Chief of the Bureau of Agriculture, Statistics and Mines of that State. We acknowledge our great indebtedness to him personally, and to his various publications for information which we have uniformly found trustworthy. During the two years this bureau has been in existence 4,000 copies of the 156 Resources of Tennessee, a book of 1,200 pages, have been distributed, besides 8,000 abridgements. Prof. Huxley, speaking of the work and its author, said: 'I am indebted to this most admirable work, of which a copy was presented to me yesterday, a report of the Resources of Tennessee, which, in my judgment, does infinite credit to the State that paid

157 for it and the person who put it together, which I do not profess to have read since yesterday, yet out of which I have contrived to pick the sort of information I want of the structure of the region where we now stand.'

"We have heard it whispered that some persons in Tennessee have suggested the abolition of this Bureau. Such a course would be most short-sighted, and occasion the highest injury to the State. Tennessee needs capital from abroad, and this
158 Bureau has brought it. Col. Killebrew is wise enough to see that it is not alone in the development of its mineral resources that wealth is to be found, but in the agricultural as well, and his effort has been to bring in capital to this end. No State can, at the present day, afford to dispense with such agencies, because capitalists look for information from official sources, and not from parties who wish to sell, and we speak from personal knowledge and examination when we say that the publications of
159 Col. Killebrew are among the fairest statements of the resources of a State we have ever seen. Governor Porter, in his canvas of the State, said: 'Our resources have been advertised all over this continent, and in many parts of the old world. Any man who has been looking for a farm, for a water-power, for a mine of coal, iron or copper, has had his demand for information supplied from this Bureau; and I state it as a fact, the climate, soil and productions of the State of Tennessee have been
160 more generally and intelligently advertised than those of all the States of the South combined.'

"It would be a source of the greatest regret to those who know its value, if the Bureau were to be discontinued.

"So competent and conscientious a public officer cannot be spared until the great work he has undertaken, and thus far successfully performed, is fairly

completed. If every Southern State had placed the work of acquainting the public with its resources in equally competent hands, immigration would have been less difficult to obtain, and capital more disposed than now to seek investment there." 161

BUREAU OF INSURANCE.

State supervision of the business of insurance is necessary for the security of the citizen and for the protection of solvent companies; this supervision is now exercised by the State Treasurer, who is *ex officio* Commissioner of Insurance. The duties of Treasurer demand the undivided time and attention of that official; his duties as Commissioner of Insurance are necessarily secondary to that, and he cannot give to the business of insurance the attention it deserves. The law requires that he shall, under certain circumstances, visit and examine any insurance company in the State; he cannot do this without neglecting the more important duties of the Treasurer's office. 162 163

I recommend that the office of Commissioner of Insurance be made separate and independent; the fees now authorized by law will be ample compensation for the services of a commissioner. I transmit the report of the Commissioner of Insurance, and commend his recommendations to your consideration.

UNITED STATES SURVEY OF TENNESSEE. 164

It affords me pleasure to announce that principally through the representations of Dr. J. M. Safford, State Geologist, the Superintendent of the United States Coast Survey, concluded, during the year just closed, to inaugurate, and is now actually carrying on, a geodetic or correct surface survey of Tennessee. This is in accordance with an act of Congress,

165 providing that in States in which geological surveys are in progress, the United States Coast Survey may institute geodetic work for the benefit of such geological surveys. The surface survey thus inaugurated within our borders is one of primary importance. Its results cannot fail to be of great service, and that too, without cost to the State. Tennessee is deplorably deficient in the matter of correct maps. There is no map of the State worthy of the name, nor can there be until such data are at
166 hand as will be supplied by the operations of the Coast Survey. Good maps are needed, not only to meet the wants of geological delineation, but for educational, commercial, political, and numerous other purposes. Such we are now in a fair way to have. The Coast Survey will, doubtless, within a reasonable time, supply a complete outline map of the State, based on accurate instrumental observation and trigonometrical calculations. This work in Tennessee is under the general direction of Dr.
167 Safford, as State Geologist, and is executed by Prof. A. H. Buchanan, of Wilson County, who holds his place under the Superintendent of the Coast Survey, to whom he reports, and from whom he receives all instructions as to the details of the work. It is thus in the hands of well-informed and able gentlemen. Out of the yearly appropriation made by Congress for the benefit of the Coast Survey, $2,000 were set apart for the work in Tennessee. The survey was commenced last summer, Dr. Saf-
168 ford selecting the part of the State lying between Nashville and Knoxville, as the initial region. Considering the shortness of the time a large amount of very satisfactory work has been done. The country designated has been reconnoitred and provisionally mapped; suitable points have been selected for stations, and a base line located. The latter runs over ground in the vicinity of Lebanon,

and will be measured during the summer. Recon- 169
noitering has been commenced west of Nashville, and will be extended to the Mississippi river so soon as practicable. For further information in regard to this work I refer you to the report of the State Geologist, to be made to you at an early day. To facilitate the survey so auspiciously commenced, I recommend the passage of an act authorizing the surveyors to run the necessary lines upon lands within the State, to adjust damages, if such should occur, and for the protection of signals, marks, 180
monuments, and other property pertaining to the Coast Survey.

Protection of Signal Lights on the Mississippi River.

The Federal Government has established a number of signal lights, and other aids to navigation on the banks of the Mississippi river, in the State of Tennessee; at certain points malicious persons have interfered with these aids to navigation; lanterns 171
have been broken and lights extinguished, thus endangering steamers and other vessels navigating the river. This is a subject of public concern, and I recommend the passage of an act protecting these aids to navigation, with a provision for the punishment of persons injuring or destroying them.

State Board of Health.

The necessity for the creation of a State Board of Health is commended to your attention. In the 172
twelve States where such a board is provided, very much has been accomplished by arousing the public to a sense of the necessity for the adoption of sanitary measures in order to prevent the operation of causes productive of disease.

Since the completion of our railroad system a large per cent. of the population of the State is in

direct and daily communication with some one of the great centres of population, and citizens of the agricultural districts are as subject to epidemical diseases as the inhabitants of the cities and towns, and have a common interest in the adoption of preventive measures.

If, by the adoption of this reform, disease can be mitigated or prevented, or the life of a single citizen saved, to that extent it will be a contribution to the wealth of the State.

The Militia.

At the request of the Secretary of War the Adjutant General of the State recently made to that officer a report of the military strength of Tennessee; this report shows that we have within the military age 239,764 men; that we have no complete or efficient military organization except a few volunteer companies.

I submit to the General Assembly the propriety of giving force and effect to our Declaration of Rights "that the sure and certain defense of a free people is a well regulated militia."

Inspectors of Illuminating Oils and Fluids.

The act creating this office has been productive of much good to the people of the State in protecting them from the use and purchase of spurious and dangerous burning fluids. The fee now allowed the inspectors should be increased, that allowed under the existing act is so inadequate that in the small towns inspectors cannot afford to provide themselves with the necessary instruments for the testing and guaging, or weighing the fluids, and the result is there are now only seven inspectors on duty in the State.

I transmit the report of the inspectors at Nashville, Memphis, Jackson, Brownsville and Chattanooga.

CENTENNIAL EXPOSITION AT PHILADELPHIA. 177

I transmit the report of Gen. J. T. Wilder, Commissioner from Tennessee; his services have been of great value to the State, and should receive suitable recognition from the General Assembly.

I also transmit the biennial report of the Trustees of East Tennessee University concerning the State College, with the report of the Treasurer of that institution.

HOSPITAL FOR THE INSANE. 178

The act of 23d March, 1875, directed the Governor, Comptroller, and Treasurer of the State to sell the "land purchased by the State for the location of Hospitals for the Insane in the Eastern and Western divisions of the State," "provided said lands shall not be sold for less than three-fourths of its original cost." No lands were bought in the Western division; in the Eastern division a tract was purchased, and is now the property of the State. 179 This tract of land should be sold, and the terms should be left to the discretion of the officers mentioned in the act referred to; under section 3 of the same act, I appointed James S. Boyd and J. M. Carter, of Knox County, to act in conjunction with the Attorney-General to make settlements with all "persons to whom the State is indebted on account "of said Hospital for the Insane;" their report is on file in the office of the Comptroller of the Treasury. 180

THE NAVIGATION OF THE TENNESSEE RIVER.

In pursuance of Senate Joint Resolution, No. 64, I have appointed a Board of Commissioners to consider plans by which the passage of railroad bridges can be made in safety by boats navigating this river.

The Commissioners have made no report.

181 GEOGRAPHICAL CONGRESS AND SYNDICATE OF TRADES.

In pursuance of Resolution No. 52, adopted by the 39th General Assembly, I appointed Commissioners to the Geographical Congress and Syndicate of Trades, held at Paris, France, in August, 1875. Four of the Commissioners, Messrs. Bronson Bayless, Albert Akers, Nathan Adams, and Volney S. Stephenson, were in attendance, and through
182 their agency a diploma was awarded to the State of Tennessee.

The Commissioners have as yet made no official report.

A. O. P. NICHOLSON,

Chief Justice of the Supreme Court of Tennessee, died the 23d day of March, 1876. Few citizens of Tennessee have been honored like this distinguished man; member of the General Assembly, Chan-
183 cellor, President of the Bank of Tennessee, delegate to the Constitutional Convention, Judge of the Supreme Court, Senator in Congress, and to his greater honor and credit it can be said, that in the performance of all the high trusts committed to him by his fellow citizens, he never deviated from the line of principle and integrity.

The General Assembly will respond to the sentiment of the people of Tennessee by giving expression to their feeling of sorrow at the death of this
184 eminent man, and that of his illustrious compeer,

ANDREW JOHNSON.

On the 31st day of July, 1875, Senator Andrew Johnson, the seventeenth President of the United States, departed this life. The death of this illustrious private citizen and eminent public officer, brought deep sorrow upon the public heart, and the

general bereavement has become the more bitter by 185
subsequent political development, threatening alike to freedom and our free institutions, in which, had he lived, he would have acted a conspicuous part in behalf of the people whose cause he made his own. The life of the deceased is full of encouragement, illustrating that neither humble origin, poverty, or want of sound influences in early life, present insuperable barriers to the triumph of an indomitable will and free spirit.

The life of this distinguished man must pass into 186
our country's history, and while it is open to the criticism of opponents and the admiration of friends, all admit that it would be impossible to draw a circle of a great man and wholly exclude therefrom Andrew Johnson.

His hopes in the future of our country were based upon the following sentiment, uttered to a friend, as he was leaving his home for the last time: "Our country supplies its own saving power in the honesty and patriotism of its people." May the peo- 187
ple be equal to the present troubles!

As Chief Executive I attended his funeral, and tendered to his family a spot upon Capitol Hill as his last resting place.

The death of Senator Johnson created a vacancy in our representation in the Senate of the United States, and I commissioned Hon. D. M. Key, of the county of Hamilton, to fill the same *ad interim*.

FEDERAL INTERFERENCE WITH STATE GOVERN- 188
MENTS.

The representatives of the people of Tennessee cannot disregard the recent action of the Federal authorities in certain States of the South—notably in Florida, Louisiana, South Carolina, and Virginia; in three of them towns and districts have been gar-

189 risoned with troops of the United States at a time of profound peace, without any proper demand being made for assistance by the local authorities, and the State House of South Carolina was subjected to an armed occupation by Federal troops. The army was made the arbiter of a disputed election, and has been prostituted to the base purpose of organizing a partisan Legislature. The order of a subaltern, excluding the representatives of the people from the State Capitol, was made impudent-
190 ly and without shame, in the interest of judicially declared fraud, and against the judgment of the law as rendered in the highest court.

The representatives of the people of Tennessee should protest against these accumulated outrages with the utmost solemnity and energy.

Conclusion.

I earnestly recommend that bills for the appropriation of money be considered at an early day.
191 The pernicious custom of postponing the consideration of a question of the first importance to the country, to the closing hours of the session, encourages hasty and inconsiderate legislation, and the appropriation of money without discussion, to purposes of doubtful propriety.

JAS. D. PORTER.

Executive Office,
Nashville, Tenn., Jan. 1, 1877.

192

EXHIBIT NO. 2.—J. D. P. 193

NEW YORK, Feb. 15th, 1877.

To His Excellency James D. Porter,
Governor of the State of Tennessee:

SIR: On the 26th of December last, we had the honor of addressing to your Excellency a letter on the disordered condition of the public debt of the State of Tennessee, of which we are owners and the representatives of owners of a large amount, and of conveying to you in same an expression of 194
our confidence and belief that a permanent adjustment of the debt on a basis equitable to the holders of it and honorable to the State was practicable, begging that your Excellency would recommend to the Legislature to appoint a commission to come to this city and confer with the creditors of Tennessee, with a view of bringing about such an adjustment.

We have the honor to acknowledge the receipt of communications to us severally addressed by your Excellency, accompanied by a resolution of 195
the Legislature of Tennessee, approved on 27th January, ult., in which the holders of the public debt of the State are invited to submit to the General Assembly, through your Excellency, propositions for an adjustment of said debt, and at the same time to most respectfully express to your Excellency, and through you to the Legislature and people of Tennessee, our great regret and disappointment that the Legislature did not think it expedient to appoint a commission to come to New 196
York, to confer with the creditors of the State for the purpose mentioned, because such a conference we still believe would have developed a plan of adjustment that, while doing equity to the creditors of Tennessee, would, by bringing her revenues and finances into harmonious and easy working order, restore her credit, and again place it firmly

on the high and solid ground it once occupied, offer encouragement to capital to seek employment within her borders in the development of her unsurpassed natural resources, and result in the greatest good to the people of the State generally, enabling them to transmit to posterity, together with the good name which they inherited, a heritage far richer than had come down to them from their fathers.

We have carefully considered the liabilities and resources of Tennessee.

We know that her great wealth of mine, field, and forest are only in the infancy of development.

We know, also, how much the future development of the vast, but now comparatively latent, resources of the State depends upon a restoration of her credit and the re-establishing of her financial system on a sound basis, and knowing, moreover, that the public creditors of the State would be benefited, in common with the people of Tennessee, by a restoration of her credit, and by giving her a healthy fiscal system, we beg leave to submit to your Excellency, and through you to the Legislature and people of Tennessee, the following propositions as to what can be done by the people of Tennessee, with the co-operation of their public creditors, for the immediate adjustment of their public debt, and for its ultimate extinguishment in an easy, gradual, and feasible way—a way which, if adopted, we feel very sure we hazard nothing in saying will be productive of the most beneficent results to the people of Tennessee.

It will be observed how essential to the success of the plan we submit for present adjustment and ultimate extinguishment of the State debt, will be the cordial co-operation of both debtor and creditor, and to what extent we propose that the public creditors of Tennessee shall contribute to its success.

We propose: 201

1. That the revenue laws of the State shall be amended so that the collection of taxes may be assured at the time or times when they become due and that at the smallest possible cost to the taxpayer.

2. That the reforms proposed and recommended to the Legislature by your Excellency in regard to the cost of county criminal prosecutions be enacted into a law. 202

3. That the expenses of the State Government be reduced to as low figures as is consistent with the maintenance of its dignity.

4. That the present rate of taxation be maintained, and that the other sources of revenue be not diminished.

5. That the State levy annually a special tax of one mill on the dollar of taxable property, the proceeds of which, in every year, together with any surplus revenue, shall be used in the purchase, cancellation, and destruction of the new issue of bonds which it is proposed herein to issue for existing bonds and past due coupons of July 1st, 1877. 203

6. That the Legislature pass a law authorizing the funding of all outstanding bonds of the State, of all past-due coupons thereon, and of the coupons which will fall due on July 1st, 1877, into new 204 bonds of the State bearing date July 1st, 1877, and having fifty years to run to maturity, bearing interest for a period of five years from their date at the rate of three (3) per cent. per annum; for a second period of five years thereafter interest at the rate of four (4) per cent. per annum; for a period of five years from the termination of the last men-

205 tioned period interest at the rate of five (5) per cent. per annum; and thereafter, until maturity and payment, interest at the rate of six (6) per cent. per annum. Interest upon each bond to be payable semi-annually on January 1st, and July 1st, in every year from and after its date, and the coupons evidencing it to be receivable by the State for all taxes and dues payable to the State; and bonds to be for $100, $500, and $1,000 each.

The debt of the State, as may be readily ascer-
206 tained, will be within her control and easy power to manage and protect from the start, if, as we sincerely hope may be the case, the plan herein outlined is availed of, and we may add that our aim has been to make it within the easy power of the people of Tennessee to avail of it.

As will be perceived by your Excellency, the Legislature and people of Tennessee, the public creditors of Tennessee, in acquiescing in this proposed plan of co-operation between them and the
207 people of Tennessee for restoring the credit of the State, and ultimately extinguishing her public debt, will voluntarily relinquish about $7,000,000 of their claims against Tennessee—an amount equal to about one-third of the entire amount of her public debt.

On the other hand, we propose that the people of Tennessee adopt the easiest and simplest mode which we can conceive of for the ultimate extinguishment of their entire public debt, a mode which, while it will only produce the very moderate annual
208 sum $268,000 at the present low valuation of property, will, by its silent but sure work, pay off the debt completely, while, by its operation, it will so reduce the amount upon which, under this plan, interest will require to be paid, that at the expiration of each period for an advance in the rate, the reduced amount for which interest will have to be provided, and the certain increase in the value of

property, will together work to make the present 209
rate of taxation quite sufficient to meet all demands upon the State.

During the first fifteen years of the currency of the proposed new issue of bonds we estimate that the proposed special tax for its ultimate payment will pay off between $5,000,000 and $6,000,000 in bonds, allowing twenty per cent. of the tax for its collection and the expenses connected with buying bonds with the proceeds.

When it is considered that this can be accom- 210
plished at so small an annual charge to the people of Tennessee, and that such certain beneficial results to them are sure to follow, we have the greatest confidence that their loyalty to Tennessee, their determination to preserve and perpetuate her honor and good name, will be sufficient to induce them to make the manly effort to that end of unitedly raising a one-mill tax on their property annually.

We are quite well aware of the partial failure of
crops in Tennessee in the years 1873 and 1874, and 211
of the depressed condition of business, and of all industries in the State, but throughout the country their exists the same depression — stagnation.

In full recognition of this depression and stagnation, which there is every reason for believing will soon give place to better times, we have in the plan herein submitted for a rearrangement of the finances of Tennessee, made her obligations within her means and evident ability to meet now. 212

With the existing rate of taxation, and the proposed special tax for the extinguishment of the debt, which together make a five-mill tax, it may not be improper to compare the rate of taxation in the States which border on Tennessee :

213

	Mills.
In Arkansas the rate is	10
In Mississippi the rate is	$6\frac{1}{2}$
In Alabama the rate is	7
In Georgia the rate is	5
In North Carolina the rate is	$3\frac{3}{10}$
In South Carolina the rate is	12
In Virginia the rate is	5
In Kentucky the rate is	$4\frac{1}{2}$

214 In conclusion, we beg to express to your Excellency, and through you to the Legislature and people of the great State of Tennessee, our confidence that all will unite with us in this effort to make it possible to avail of the proposed co-operation of the creditors of Tennessee to bring about so desirable a result as the re-establishment of her credit on a plan so favorable as we have herein outlined, and we have the honor to be, your obedient servants,

215 GEORGE SMITH, of London, England,
by GEDDES & SMITH, Agents, &c.
BROWN BROS. & Co., Agents.
DREXEL, MORGAN & Co., Agents.
E. D. MORGAN & Co., Agents and owners.
JAMES G. KING'S SONS,
as agents for bondholders.
WARD CAMPBELL & Co., agents.
G. W. STANTON, JR.
P. GEDDES.

216 We concur in the foregoing:

CALVIN STEVENS,
by C. AMORY STEVENS, Attorney.
J. V. CLARK, President, Chicago,
per THOS. G. ROBINSON.
WM. G. CREAMER, No. 96 John Street.
CHAS. J. HINE, New York.

A. ISELIN & Co., as Attorneys, New York. 217
W. R. JENKINS, New York.
MRS. JOSEPHINE S. NEWCOMB,
by H. POMEROY, No. 54 Broad street.
GEORGE WATSON, Chicago.
per JAS. H. SMITH.
JNO. H. MACY, President.

HENRY E. JOHNSTON,
JOHNSON BANKHEAD & Co., Agents,
THOMAS F. ANDREWS,
M. ABRAMS,
WILLIAM DE GORY,
SAMUEL L. PETERS,
WILSON, COLSTON & Co., Ag'ts,
JOHN S. GITTINGS,
} Baltimore. 218

EXHIBIT No. 3.—J. D. P.

MESSAGE OF GOVERNOR JAS. D. PORTER TO THE FORTIETH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE.—FIRST EXTRA SESSION.—DECEMBER 5, 1877. 219

Gentlemen of the Senate and House of Representatives:

I have convened the General Assembly in extraordinary session for the purpose of considering the following recommendation to adjust the State debt: "*That after adding the arrears of interest the* 220 *aggregate amount of the State debt should be readjusted by the issue of new bonds at the rate of sixty per cent. of the total amount;* i. e., *for every sum of one thousand dollars, new bonds should be given in exchange and full settlement for six hundred dollars, or for proportionate amounts, the new bonds to carry six per cent., payable semi-*

annually in the City of New York, the principal payable in thirty years, the interest coupons to be received by the State for all taxes."

This is the recommendation made by a Committee of Arbiters, appointed at a meeting of citizens held at the Clearing House in New York City in January, 1877. In a special message, I urged the General Assembly to send this committee of conference, and recommended that all questions touching the State debt "be postponed to await the action of the arbiters," and announced that if this policy was adopted, "and if time becomes essential, I will not hesitate to convene the General Assembly in extraordinary session."

On the 19th of March, 1877, the Legislative Committee reported to the General Assembly the result of the conference: seven days thereafter the two Houses adjourned without taking action upon this report. Under the circumstances mentioned I have recognized it as my duty to call you from your homes to consider this recommendation, and to respectfully and earnestly recommend its adoption.

Since the adjournment of the General Assembly, the debts due from the Memphis & Charleston and Mississippi Central Railroads, have been paid; deducting the sum of $299,814, the amount of the debt of the Mississippi & Tennessee Railroad, not due, and for which the State has ample security, the debt of the State on the 1st January, 1878, will amount to $23,212,606; this includes the bonded debt not due, the bonded debt past due, five full instalments of interest, and balances of several instalments not presented, amounting to $40,000. The greater part of this debt was incurred prior to 1861. The following table exhibits the amount issued since the late war between the States, the amount canceled and the amount now outstanding:

225

	Registered and not canceled.	Registered and canceled.	Canceled before registration.	East Tennessee University.	Mineral Home.	Unaccounted for.	Total.
Green, no letter....	2,388	321	7,021	113	120	37	10,000
" " "B"..	646	114	4,283	100	.....	61	5,203
" " "C"..	598	60	1,401	2	.....	139	2,200
White, " "D"..	2,416	429	2,006	37	.....	53	4,941
Grand Total.....	6,047	924	14,741	252	120	290	22,344

226

The first series, Green, no letter, were issued under the Act of 1851-2, and amendments, $9,593,000 issued to railroads and turnpikes, and $407,000 were renewals of bonds past due. The second series, Green "B," were issued under authority of the Act of 1851-2, $290,000 were renewals for past due bonds, the balance issued to railroads and turnpikes. The third series, Green "C," and fourth series, White "D," issued under Acts of 1866 and 1868, were for past due interest, and known as Funding Bonds. This table shows that there are now outstanding $3,033,000 of the bonds popularly known as "Brownlow Bonds."

227

The debt is accumulating at the rate of four thousand dollars per day, and if the present condition of affairs continue, it is an easy calculation to determine how soon the debt will gain volume enough to destroy the prosperity of the State and bring discredit upon all of its citizens.

228

229 THE VALIDITY OF THE DEBT.

No question can now arise as to the validity of the public debt with the exception of the inconsiderable amount issued to Mineral Home Railroad, which has been declared fraudulent; the people of Tennessee through their representatives have in the most formal and solemn manner recognized it by the bonds of any series being declared receivable in payment of the purchase money for delinquent rail-
230 roads. It was again recognized by the funding act of 1873, by which the obligation of the State was renewed to pay interest on the entire debt and the principal at maturity, and the validity of the several series of bonds have been recognized by the 39th and 40th General Assembly by being declared receivable in discharge of debts due to the State, and I assume that no judicial tribunal would now pronounce against the funded and registered bonds.

But the New York arbiters say in the report made
231 to the General Assembly, after full discussion with the Legislative Committee, "when all the circumstances under which the debt was incurred, the peculiar condition of affairs in the State together with its present ability and its future resources," that the compromise recommended by them is "just and fair both to debtor and creditor." The adoption of this recommendation of a tribunal so disinterested and distinguished, without consulting the holders of our bonds, would relieve the State of the sus-
232 picion of unfairness or of the charge of repudiating an acknowledged liability. But such a number of the bondholders have signified their willingness to accept the terms of the adjustment as to satisfy me that if it is made it will be generally acceptable. I transmit the proposition of the bondholders. The terms are liberal to the State, the creditors voluntarily make the suggestion, and it is consistent with

the dignity of the State to accept the abatement. 233
The financial condition of the State is the only barrier to immediate prosperity. Its greatest want is capital and immigration. Both will avoid us unless the public debt is provided for. Men do not buy where the tenure of property is insecure, or where public obligations are disregarded. One of the highest duties of the citizen is the maintenance of the public credit; without it little is left worthy of public preservation.

234

THE ABILITY OF THE STATE.

There is to my mind no question as to the ability of the State to meet the interest on the debt, if adjusted upon the terms offered by its creditors. The present assessed value of the property of the State is $236,000,000, and is an unusually liberal one to the taxpayer. Tennessee contributes to the markets of the world, with her cotton, grain and tobacco, as largely, and is as rich in soil, minerals and productions as any State in the Union. The value of the 235
principal crops raised in Tennessee during the year 1876, amounted to $47,126,310, not less than one-third of which was surplus. The productions of the State of Kentucky for the same period was $2,687,560 less. Tennessee produced seventeen millions more than Virginia, three millions more than Georgia, more than Maryland and South Carolina combined, mor than Alabama and Florida, and seventeen millions more than North Carolina, while the difference in population is in favor of Kenfucky and Georgia, 236
and Maryland and South Carolina combined. The productions of the State for the year 1877, amount to over $52,000,000, with an increased surplus of cotton, wheat and tobacco, and the value of farm products is greater per capita in Tennessee than it is in any of the States named, and greater according to the last census report than it is in the rich

237 States of New York, Pennsylvania and Missouri. There are other productions of the State, cattle, mules, horses, sheep, bacon, fruit, marble, iron, from which large revenues are derived, with an increasing area and capacity for production.

The bonds of the State were issued for purposes of internal improvement, very many of them were sold above par, and are now held by the original purchasers, by educational and charitable institutions; among the latter class is the Peabody Insti-
238 tute, at Baltimore, Maryland, which has signified through the proper officer a willingness to accept the terms of the proposed adjustment; the greatest American philanthropist, George Peabody, left as part of the endowment to this institution that bears his name, $364,000 in the bonds of the State of Tennessee. Since 1868 the children of Tennessee have received from the Peabody Trust Fund, for their education, the sum of $191,650, and for the year 1878, an appropriation that will make it
239 exceed $200,000. The State of Tennessee cannot, in my opinion, accept this abatement, or that proposed by the holders of bonds issued for the erection of the capitol, those held by educational institutions, by charities, or by persons whose guardians made the investment in pursuance of our statute authorizing the investment of the estate of minors in the bonds of the State.

If the adjustment recommended is adopted I recommend that the new bond shall bear date July
240 the first, 1878, to carry interest from that date; provision for a sinking fund can with propriety be postponed, but in case of a surplus in the Treasury after liquidating the appropriations made by law, it would be well to provide for its investment in the bonds of the State, and in this way inaugurate a system for the gradual extinguishment of the principal of the debt.

THE COLLECTION OF THE REVENUE. 241

The Comptroller of the Treasury, in his biennial report to the General Assembly, states that "it is believed that the compensation allowed Trustees is inadequate to the labor and responsibility of the office, especially in the smaller counties, where there is little or no municipal taxes to be collected," experience has confirmed the wisdom of this recommendation ; in one of the Counties of the State there is no Collector, no one being willing to accept the 242
office for the compensation allowed by law ; in several others, resignations have been tendered. The revenue cannot be efficiently collected in the smaller counties for an inadequate compensation, and I recommend such an amendment to the statute as will secure this result.

It will be necessary to provide by law for the expenses of this extraordinary session of the General Assembly.

CONCLUSION. 243

The gravity of the question submitted to you will, I doubt not, command your most deliberate consideration ; counselling wisdom and calmness in its discussion, I leave it with you in the confident belief that your action will be controlled by your convictions of duty to your constituents.

JAMES D. PORTER.

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DOCUMENTS ACCOMPANYING THE GOVERNOR'S MESSAGE.

Letter from John B. Manning, New York.

NEW YORK, November 1st, 1877.

To His Excellency, JAS. D. PORTER,
Governor of Tennessee:

I am authorized on behalf of a large number of Tennessee bondholders to submit proposition of compromise by accepting sixty cents on the dollar for bonds and past due coupons, payable in new six per cent. consols, and ask you to convene the Legislature to carry out the compromise.

JOHN B. MANNING.

(Represents $2,000,000.)

Letter from A. R. Hall, Huntington, Tenn.

HUNTINGTON, TENN., November 23d, 1877.

Governor JAMES D. PORTER:

Sir—Since writing you yesterday I notice that the terms of my proposition differ somewhat from those contained in your proclamation. In order that not the least obstacle may be thrown in the way of settlement I am willing to accept the terms put forth in your proclamation.

Very respectfully,

A. R. HALL.

Letter from G. W. Norton & Co., Louisville, Kentucky. 249

LOUISVILLE, KY., October 27th, 187

JAMES L. GAINES, Esq.,
Comptroller,
Nashville, Tenn.:

Dear Sir—Your favor of the 25th instant is received and noted. As stated in ours of 24th instant, the members of this firm have held and owned Ten- 250
nesseeState bonds for more than twenty years, having faith in them as a safe and good investment. The Clearing House Committee, of New York, Geo. S. Coe, Esq., Chairman, recommended an adjustment of the State debt of Tennessee by issuing a new six per cent. bond, with coupons receivable for all taxes and due to the State, to the extent of sixty per cent. of the principal and accrued interest of the present outstanding State bonds, and if the Tennessee Legislature 251
would certainly adopt this plan of adjustment, without any modification whatever, we would be willing to accept it, as far as we are concerned, and, as stated in ours of the 24th inst., we believe it would be generally accepted by the bondholders if promptly offered; but, in our opinion, the bondholders would not accept any less than this. If the Legislature will certainly adopt the Coe recommendation, then we should be pleased to see an early called session of the Legislature. We have no objection 252
to you placing this letter and ours of the 24th inst. in the hands of Governor Porter, as suggested by you.

Truly respectfully,
G. W. NORTON & Co.

253 *Letter from Eugene Kelly, New York.*

NEW YORK, October 19th, 1877.

To His Excellency, JAMES D. PORTER,
Governor of Tennessee:

Sir:—The undersigned owners and representatives of holders of bonds of the State of Tennessee beg to inform you that they are willing to accept new bonds of the State, having thirty years to run, bearing six per cent. interest, payable semi-annually
254 in the City of New York, coupons to be receivable for taxes and all other dues to the State, at the rate of sixty per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration on the debts of the Southern States.

The undersigned, therefore, respectfully requests your Excellency to convene the Legislature in extra session, and submit this proposition to it.

With much respect, we beg to remain
255 Your obedient servants,
EUGENE KELLY.

(Holds $297,000.)

Letter from G. W. Stanton, Jr., and E. D. Morgan & Co., New York.

NEW YORK, October 19, 1877.

256 To His Excellency, JAMES D. PORTER,
Governor of Tennessee:

Sir:—The undersigned owners and representatives of holders of bonds of the State of Tennessee beg to inform you that they are willing to accept new bonds of the State having thirty years to run, bearing 6 per cent. interest, payable semi-annually in the City of New York, coupons to be receivable

for taxes and all other dues to the State, at the rate 257
of 60 per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration, on the debts of the Southern States, provided the law is passed before the first of February next. The undersigned, therefore, respectfully requests your Excellency to convene the Legislature in extra session, and submit this proposition to it.

With much respect, we beg to remain

Your obedient servants. 258

G. W. STANTON, JR.

E. D. MORGAN & CO.

Letter from bondholders of Baltimore.

BALTIMORE, October 19, 1877.

To His Excellency, JAMES D. PORTER,

Governor of Tennessee:

Sir:—The undersigned owners and represent- 259
atives of holders of bonds of the State of Tennessee, beg to inform you that they are willing to accept new bonds of the State, having thirty years to run, bearing six per cent. interest, payable semi-annually in the City of New York, coupons to be receivable for taxes and all other dues to the State, at the rate of sixty per cent. for the present bonds and past due coupons, in acordance with the terms of the award of the Committee of Arbitration on the debts of the Southern States. 260

The undersigned, therefore, respectfully request your Excellency to convene the Legislature in extra session, and submit this proposition to it.

With much respect, we beg to remain

Your obedient servants,

($444,700.) WILLIAM MCKIM,

President of the Peabody Institute, Baltimore.

261 JOHN BOLGIANO,
SAMUEL L. PETERS,
FRANCIS WHITE,
JOSEPH H. RIEMAN,
A. RIEMAN,
THOS. WILSON,
A. D. O'LEARY,
DANIEL H. SHRIVER,
BENJ. W. BENNETT,
By D. H. Shriver,
262 JOHN CUSHING,
EDW. K. SCHAEFFER,
FRANCIS A. CROOK,
Treasurer of the Baltimore Equitable Society.
FRANCIS A. CROOK.

Letter from E. D. Morgan & Co., New York.

NEW YORK, July 7, 1877.

263 To His Excellency, GOV. JAMES D. PORTER,
Nashville, Tenn.:

Dear Sir:—Your favor of the 29th ult., addressed to Messrs. Geddes & Smith and ourselves has been received, advising that you propose to convene the General Assembly after the new assessment has been completed, in November, for the purpose of adjusting your State debt.

You ask if a settlement upon the basis proposed
264 by the Arbiters in March last will be acceptable to the bondholders, and desire us to confer with them and advise you. We will communicate with you later on, after learning the views of the foreign holders whom we represent, as, also, of some of the larger holders here.

We are told that it is represented in Tennessee that large amounts of your State bonds are held by

parties who bought at late current prices. We be- 265
lieve that very few are so held. Our observation leads us to believe that nearly all the bonds which the necessities or fears of holders have forced to sale of late years have been absorbed by your railroads for settlement with the State. We find them generally held by original investors, who believe that your State will in the end pay them, principal and interest.

Very respectfully,

E. D. MORGAN & Co. 266

EXHIBIT No. 4.—J. D. P.

MESSAGE OF GOVERNOR JAS. D. PORTER TO THE FORTIETH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE.—SECOND EXTRA SESSION—DECEMBER 12, 1877. 267

EXECUTIVE OFFICE,
NASHVILLE, Tenn., December 12, 1877.

Gentlemen of the Senate and House of Representatives:

I have convened the General Assembly in extraordinary session for the purpose of adjusting the State debt. Before final action was taken upon the proposition submitted on the 5th of December, 1877, to the first extra session of the Fortieth Gen- 268
eral Assembly, a number of the creditors of the State, representing several millions of her debt, forwarded the following communication to this office:

NEW YORK, December 11, 1877.

To Gov. JAS. D. PORTER:

I am a large holder of Tennessee bonds, which

have been held for years strictly for investment account. I was a signer of the former petition sent you through the Committee of Arbitration, and while I would prefer to have that proposition accepted, yet if it would require a revenue bill that is deemed by the Legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and do hereby change it. I propose to take fifty cents on the dollar. I think this dispatch represents the sentiment of most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the Legislature, through your Excellency, to reciprocate this feeling, and make a settlement without further delay. Please submit this to the Legislature for its action.

THE ESTATE OF CALVIN STEVENS,
C. AMORY STEVENS, *Trustee.*

NEW YORK, December 10, 1877.

To GOV. JAS. D. PORTER:

We hold and represent Tennessee State bonds, which have been held for years as an investment, which we hereby offer to fund into New Tennessee State bonds at fifty cents on the dollar of principal and accepted interest, and we respectfully request you to submit this proposition to the Legislature for its acceptance or rejection.

INMAN SWANN & Co.

LOUISVILLE, December 10, 1877. 273

To Gov. JAS. D. PORTER:

We are willing for the proposition of arbiters to be made fifty cents instead of sixty, rather than the adjustment should fail.

G. W. WHARTON & Co.

NEW YORK, December 10, 1877.

To Gov. JAS. D. PORTER:

Having heard that there is no probability of the 274
sixty per cent. proposition being accepted, we would request you to recommend to the Legislature to pass a law funding the debt of the State at fifty per cent. of the principal and past due coupons, in bonds bearing six per cent. interest. We will accept this for the bonds we represent, and think we can induce a large majority of bondholders to do the same.

A. ISELIN & Co.

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NEW YORK, December 10, 1877.

To his Excellency, JAS. D. PORTER,

Governor of Tennessee:

On behalf of clients I offer to accept for bonds and interest at fifty per cent. new six per cent. consols, with first coupon payable July, 1878, and if not January, 1879. I beg you to lay this before the Legislature.

JOHN B. MANNING.

NASHVILLE, December 10, 1877. 276

To his Excellency, JAS. D. PORTER:

Dear Sir—The following dispatch has just been received:

NEW YORK, December 10, 1877.

B. F. WILSON, Nashville, Tenn.:

My firm holds bonds for themselves and others,

277 and are willing to fund at fifty on principal and accrued interest into six per cent. bonds, and if you think it best to do so you may hand this proposition to the Governor, to be submitted to the Legislature by him. It will take time to see many of the bondholders, and especially those who hold as investors, but most all of this class, so far as I have seen them, prefer to have the matter settled at fifty rather than have no settlement made.

R. T. WILSON.

278

And in an unofficial way I have been informed that the great body of the creditors have indicated a willingness to accept the same terms.

The creditors of the State understand the temper of our people, both have become the victims of unscrupulous speculators, their influence and counsel has aroused suspicion in the mind of the citizen and
279 a feeling of distrust on the part of the creditor, and the good and great name of Tennessee is in danger of being sacrificed to the avarice and greed of these mere adventurers. The creditors now come forward and offer a concession to meet what they understand to be the views of the represntatives of the people. It is a liberal and generous one, and in my opinion should be accepted without hesitation or delay. We cannot ask for a further abatement, or longer postpone the settlement of a question demanded by
280 every consideration of justice and policy.

I transmit a statement from the Comptroller of the Treasury exhibiting the levy necessary to meet the obligations of the State if the proposition of the creditors is accepted. This statement does not include $70,500 income from the lease of the Penitentiary, not less than $56,000 from present valuation of railroads, together with the revenue to be derived

from the tax on telegraph lines and sleeping cars. 281

If a compromise of the debt is made it will be the duty of the General Assembly to provide the revenue necessary to carry it out. It would also be necessary to provide by appropriate legislation for the expenses of the first and present extra sessions of the General Assembly.

I appeal to the General Assembly to rescue the State from its present peril, and to preserve something of its credit. The people of Tennessee are not prepared to learn the full lesson of repudiation; 282 they are still sensible of the responsibility resting upon them of maintaining the good name impressed upon the State by so many of their sons. The time has been when the prestige of Tennessee, the high standard of her commercial crdit, made all of her sons proud of their nativity. Do not let us turn our backs upon this honorable history.

JAS. D. PORTER.

283

COMPTROLLER'S OFFICE,
NASHVILLE, Tenn., Dec. 12, 1877.

To His Excellency,

JAMES D. PORTER, *Governor*, etc.:

Sir—In reply to your inquiry of this date in regard to estimate as to what tax it may be necessary to levy on the assessed taxable property of the State in order to pay 6 per cent. interest on the State debt adjusted at 50 cents, I have the honor to 284 convey herewith estimate which assumes that current expenses and interest on school fund were provided for at the regular session of this Legislature.

From this statement it will be seen that an additional levy of three mills, or 30 cents on $100, will be sufficient to provide for the interest on the State debt, provided the debt should be adjusted at fifty cents on the dollar:

285	Bonded debt, funded and registered, including accumulated interest to July 1, 1878.....		$23,212,666 00
	Adjusted at fifty cents.....		11,606,333 00
	Interest on $11,606,333 at 6 per cent.		696,379 98
286	Assessed taxable property in the State as per tax aggregate for 1877 (DeKalb County estimated).....$236,799,580 00		
	At 30 cents on $100 this tax aggregate will yield.	$710,398 74	
	Deduct 13 per cent. for cost of collection, delinquencies, etc.....	92,351 84	
	Net.....	$618,046 90	
287	Add amount derived from tax on merchants, which tax is governed by the tax on property, it being estimated that at 10 cents on $100 the tax on merchants will yield $32,000. Then at 30 cents on $100 it will yield.....	96,000 00	
288	Total estimated receipts from tax on property and tax on merchants at 30 cents on $100.....		$714,046 90

Respectfully submitted

JAMES L. GAINES,
Comptroller.

EXHIBIT NO. 5—J. D. P. 289

(Private.) NEW YORK, Aug. 1, 1877.

Hon. JAMES L. GAINES,
Comptroller,
Nashville.

Dear Sir:—I think that I may now safely say to you confidentially that the parties in interest will be prepared to pay off the debts of the Mississippi Central to your State just as soon as it is safe for them to do so. 290

I was amused when I read in the American newspaper the other day the very brief notice of the payment of the debt of the Memphis and Charleston road to the State which it published. A stranger would conclude that it was published solely to account for your being in New York, about which the public might be concerned, to assure the people of Tennessee that you were not here to pay off the State debt, or anything of that kind.

I have not yet heard from Mr. Smith, and am 291 therefore not able to indicate what view he may take of the conditions upon which Governor Porter says he will call an extra session of the Legislature. I have, however, not changed my own views as to what should be done, but I am more firmly convinced than ever that the proposition of the bondholders should be accepted, or one its equivalent, which I think might be gotten up, offering to settle at say 75 per cent. of principal and interest in 6 per cent bonds, coupons receivable for all taxes and dues 292 to the State. If any hope were held out that a settlement can be effected at the equivalent of our proposition, say 75c., I would do my best to get all the principal bondholders to make a proposition to settle at that, and I think that with careful handling it could be carried. Of course there are always some who hold back, but I think that the great majority

would take 75 per cent. under the name of the equivalent of their proposition already made.

The debts of the railroads to the State may now be regarded as practically settled. What remains is simply a question between debtor and creditor.

Freed from the complications which grew out of these railroad debts the discussion of the debt question will be very clear and simple henceforward.

If a few of you men of influence and character would unite in an effort to bring about a compromise on the basis of 75 per cent. I think it could be effected satisfactorily to all, while it is very doubtful if an acquiesced in settlement at a lower figure would ever be regarded as other than a forced one by the public and the bondholders.

The intervention of the so-called arbiters of the Clearing House was the most unfortunate thing that could have happened.

Personally I have worked hard to save the remnant of Tennessee's once good credit, and I make this last effort to complete the job. If it fails, let it be so. Posterity will ever regret a blunder made now.

If you think so advisable you may convey to the Governor at your convenience the substance of what I have said, and let me know what he may have to say in reply.

Very truly yours,

P. GEDDES,

P. O. Box 936.

EXHIBIT NO. 6—J. D. P. 297

NEW YORK, Aug. 23, 1877.

JAMES L. GAINES, Esq.,
Comptroller.

Dear Sir:—I duly received your esteemed favor of the 8th current.

Since then I learnthat the Mississippi and Tennessee Railroad Company have voted to pay off their 298
debt to Tennessee. This practically settles up all advances made by the State to railroad companies, and reduces the whole State debt question to one between the people of Tennessee and the investors in their public debt. What the latter will agree to do I cannot say. They may or may not adhere to their proposition of last February.

If the people of Tennesseee under any circumstances are liable to do anything disgraceful in regard to their public debt, or permit anything of that kind 299
to be done, of which you seem to entertain fears, should a settlement not be come to this year, and the debt question become one of the issues in the State canvas of next summer, the inquiry forces itself upon the bondholders, of how much value would the reduced debt of such a people be to the holders of it?

This is a very serious question in view of the fears you express, and of what I will now only characterize as the extraordinary legislation of last winter. 300
I shall be happy to hear from you in reply at your convenience.

Mr. Smith has been travelling since the beginning of July, and hence we do not hear from him.

I am,
Very truly yours,
P. GEDDES,
P. O. Box 936.

301 EXHIBIT NO. 7—J. D. P.

(Private.) NEW YORK, August 27, 1877.

HON. JAMES L. GAINES,
Nashville.

My Dear Sir:—I have just had an interview with Mr. Osborne, who reports that in thirty days the parties in whose interest the Mississippi Central
302 was bought in the other day will receive a confirmation of their purchase. It is quite well understood here that so soon as they can do so with safety, they will pay off the lien of Tennessee on the Miss. Central, and that they now think they can safely pay it off sixty days hence.

There is thus little doubt that the last of Tennessee's advances to the railroads within her borders will be paid off early in the fall, thus freeing her and her creditors too, for that matter, from a very
303 troublesome disorder.

Although you do not in your note of the 8th current give much reason to hope that a settlement of Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest citizens of Tennessee who must be still in the majority would much prefer to pay the State debt *in full*, if some plan were submitted which would make it clearly possible for them to do so.

304 The outstanding bonds of Tennessee are mainly held by investors, by trustees and Trust Institutions. The "margins" of speculators in and out of Wall street have long ago disappeared, and the bonds upon which they were held been sold.

Now, investors, and parties, and institutions holding in trust prefer much any reasonable reduction of the rate of interest their investments will produce to a reduction of the principal.

For the past four years they have been receiving 305
lower rates of interest and smaller dividends on
their investments than they have been accustomed
to. Many of them, judging by the large subscrip-
tions to government four per cents. recently, have
come apparently to the conclusion that lower rates
of interest than formerly prevailed will hereafter
permanently prevail. This is the mood in which
they now appear to me to be, and it has suggested
the idea that advantage might possibly be taken of
so favorable a time and circumstances by the 306
friends of Tennessee to bring about a compromise
of the rate of interest on her debt which wonld en-
able her with ease to pay it all off.

I will not discuss her ability to pay her debt, but will assume it and pass on to my suggestion, which is as follows:

The State to issue new bonds for the principal and past due interest of her existing bonds, to bear interest at 4 (four) per cent. per annum, payable semi-annually, January 1 and July 1, in each year, 307 coupons to be attached to the bonds representing each payment of interest, to be receivable by the State for all taxes and dues to the State, and to be free from taxation of any kind in the State. The bonds themselves to be payable fifty or one hundred years hence, and redeemable by the State at any time after six month's notice that the State is prepared to pay them.

The bondholders of Tennessee may object to mak-
ing such a proposition of compromise; but if I get 308
from you and the Governor encouragement that if
such a proposition were made by the holders of more
than half the debt, it would be accepted, I will ex-
ert myself with Mr. George Smith and other well
known large holders to make it.

Firmly convinced as I am that a settlement in full, if by any possibility it can be accomplished,

309 will be of immense present and future advantage to Tennessee and Tennesseeans, I hope that you will induce Governor Porter and the other friends of State credit to give my suggestion careful consideration.

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, and will, if necessary, go to Nashville for the purpose of an interview with the Governor and yourself.

310 If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can still be restored and her honest pride saved.

Let me hear from you on receipt and write further afterward.

Truly yours,

P. GEDDES.

EXHIBIT NO. 8—J. D. P.

311

NEW YORK, Aug. 29, 1877.

HON. JAMES L. GAINES,

Nashville, Tenn.:

My Dear Sir:—I thank you for your favor of 25th current, and for the information and suggestion therein communicated.

Seeing by the morning papers that the Governors were to meet yesterday at the Continental Hotel, Philadelphia, I telegraphed to Governor Porter

312 there asking him where a letter would reach him today, and after hearing from him wrote him with a copy of my last letter to you, asking him to let me have the benefit of his views thereon in advance of his arrival here, and saying that if agreeable to him I would with pleasure call upon him when he comes to New York.

In case Tennessee wants to pay off her debt it

will be of great advantage to her to arrange for a low rate of interest on it. Bonds bearing a low rate of interest can be with greater ease or at lower cost bought for a sinking fund than can bonds bearing full rates. 313

This is a point I had in view when we made our proposition of compromise, and one which I hope will have some weight yet with you.

Yours truly,

P. GEDDES.

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EXHIBIT NO. 9—J. D. P.

NEW YORK, Feb. 23d, 1877.

His Excellency,
JAMES D. PORTER,
Governor of Tennessee:

SIR: We beg leave to call your attention to the enclosed telegram to the *New York Herald*, from its Nashville correspondent, cut from this morning's issue of the *Herald*, and to confirm our dispatch to you of this morning by telegraph in relation thereto, as follows: 315

"Proposition from large and influential New "York and Baltimore bondholders expressed to you "on Wednesday, and should be received to-day. "Bondholders here know nothing whatever of a "meeting or of resolutions reported in *Herald* to- "day as having been sent to you, and by you trans- "mitted to legislature, with a special message. 316

"This may be a movement designed to destroy or "embarrass any proper adjustment."

No meeting of bondholders of Tennessee, so far as we are aware or can ascertain, has either been called

317 or held in this city. Neither have we heard at any time of a purpose to call or hold such a meeting, nor of a purpose or desire on the part of real holders of Tennessee bonds to take any action whatever, outside of what has been taken through and in the communication which we, with others had the honor to address to you under date the 15th current. It could hardly be possible to call or hold a meeting here of Tennessee bondholders without our knowing or hearing about it. Such being the case, we thought it
318 our duty to telegraph to your Excellency as we did this forenoon. It occurred to us that possibly an attempt to mislead your Excellency and the people of Tennessee as to the sentiments and wishes of the real holders of the indebtedness of the State had been made, akin to the attempt made last year to create a false impression, through a letter to the State Treasurer, to which the name of one of the Astors had been forged.

The debtors of the State, with all of which she has
319 been extremely liberal, even to the injury of her own credit many here believe, are supposed to be antagonistic to the consummation of any plan for the restoration of Tennessee credit now, the complete prostration of which, it is supposed, would be for their immediate pecuniary advantage. This view, if entertained by any of the debtors of the State, is unsound. For, with every decline in the credit of the State, their credit inevitably suffers.

But, to remove this cause of a real or apparent
320 antagonism between the debtors and creditors of the State, and also to remove—which is of immediate and great importance—an obstacle which is calculated to prevent or, at least, hinder the people of Tennessee and their public creditors from coming to an agreement with respect to what each should do to restore the credit of the State, and place it on a solid basis, we would respectfully suggest to your

Excellency that the debtors of the State be required, 321
within a reasonable time, say by or before July 1st, 1877, to pay off every obligation due from them to the State as now they may do, after which time only such advances as were specifically made to each to be receivable in payment or cash; this is to apply to principal and interest.

We submit to your Excellency whether there would be any hardship or injustice in requiring this, and assure you that the creditors of the State would regard such a step as one taken in the right direc- 322
tion; and

We remain
Your Excellency's Ob't Serv'ts,
GEDDES & SMITH.
E. D. MORGAN & CO.

The views above given, we beg to add, are for your own personal consideration.

G. & S.

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I, WILLIAM H. DELANCEY, Special Examiner, do hereby certify that an original letter, of which the foregoing is a true and exact copy, was produced before me on the examination of Peter Geddes, a witness produced on the part of the complainants, and was submitted to him and acknowledged by him, as appears in his deposition, to which this is 324
annexed as an exhibit. I further certify that the foregoing copy is a copy of the whole of such original letter.

New York, October 13th, A. D. 1879.

WILLIAM H. DELANCEY,
Special Examiner.

325 EXHIBIT No. 10.—J. D. P.

THE WESTERN UNION TELEGRAPH COMPANY }
(51c). *New York, Dec.* 15, 1877. }

Received at 2:49 P. M.

To Gov'r JAMES D. PORTER:

The undersigned do not believe that any compromise measure at less than fifty per cent., bearing six per cent. interest, would be accepted by the
326 bondholders, and that the practical effect of a measure at a less compromise rate, of either principal or interest, would be to leave a great majority of the bonds outstanding, and practically no settlement of the State debt.

A. ISELIN & Co.,
F. H. COSSITT,
by J. G. HOLBROOK, Att'y,
CHAS. M. FRY,
THE GLOBE LIFE INSURANCE Co.,
327 ESTATE OF CALVIN STEVENS,
C. AMORY STEVENS,

88 paid *Trustee.*

EXHIBIT No. 11.—J. D. P.

NEW YORK, Dec. 15, '77.

GOV. JAS. D. PORTER, Nashville, Tenn.

Dear Sir:—I telegraphed you Dec. 11th, and
328 again to-day. I feel it my duty to further say: That while I fully recognize and sympathise with the financial distress of Tenn., yet I cannot entirely disregard my own embarrassment and that of my fellow bondholders.

I represent one of the many estates which purchased Tenn. bonds at a time when her credit stood high, and none feared that she would do aught to

lower it. We now offer liberally to share half of 329
the loss. Speaking for one (and I believe that I express the sentiment of the majority) I cannot discount my just claim at better than 50 and 6 per cent. (fifty per cent. of old bonds and interest due changeable for new bonds bearing six per cent. interest), nor can I yet believe that the Legislature of Tenn. will force her creditors (who have offered so liberally) to take less.

Allow me to call your attention to a fact of which you may not be aware. John T. McKinnon speaks 330
for (if he has not already overstepped his instructions) a self-appointed syndicate. It is well-known that the syndicate own few, if any, of the bonds. They do not represent the bondholders. In fact the bondholders denounce their interference and mercenary motives. This self-constituted syndicate does not seek only to improve and promote the best interests of the South. Its sympathy would seem to be quite as much with itself. With a subscribed capital of only ten thousand dollars, it aims to in- 331
crease it by levying a regular broker's commission on the already over-burdened stockholders.

As a sovereign State your unfortunate creditors appeal to you to act as becomes your dignified position—to deal directly with bondholders, to treat as discreditable impertinence, this interference of a self-appointed syndicate, that speaks without the authority of your creditors, and whose misrepresentations and mercenary motives they generally denounce. 332

Very respectfully,

THE ESTATE OF CALVIN STEVENS,

C. AMORY STEVENS, *Trustee*

Care of

H. T. MORGAN & Co.,

35 William St., New York.

333 EXHIBIT NO. 12.—J. D. P.

NOTICE TO TENNESSEE BONDHOLDERS.

Bank of Commerce Building, Room 8.

NEW YORK, Jan. 19th, 1878.

At a meeting of the Committee of Tennessee bondholders—Present: Eugene Kelly (Chairman), Peter
334 Geddes, J. G. K. Duer, J. T. Terry and Dr. R. S. Moran, it was

Resolved—that a written copy of the resolution passed at the meeting of Tennessee Bondholders, held January 16th, 1878, be sent to Governor Porter, and that copies of the same be also printed for general distribution. It was also,

335 *Resolved*—That all holders of Tennessee bonds are requested to communicate with Mr. Peter Geddes, Bank of Commerce Building, Room 8, New York, one of said Committee.

C. AMORY STEVENS,
Secretary.

P. S.—It is necessary that all Tennessee bond holders send in their names for record as soon as possible.

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CALL OF MEETING OF TENNESSEE BONDHOLDERS.

NOTICE.

The holders of the State of Tennessee Bonds are earnestly requested to meet at the office of John B.

Manning, No. 14 Wall Street, on Wednesday, January 16th, at 12 o'clock. 337

E. D. MORGAN & CO.,
BROWN BROTHERS & CO.,
EUGENE KELLY,
GEDDES & SMITH,
JAMES G. KING'S SONS,
A. H. POMEROY,
GEORGE W. STANTON,
C. AMORY STEVENS.

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At a meeting of Bondholders of the State of Tennessee, held pursuant to the above call, the following preamble and resolutions were adopted :—

Whereas, on the 8th March, 1877, at a meeting between a committe of five members of the Tennessee Legislature (of which Col. John H. Savage was Chairman), and a Committee of Arbitration (of which Mr. George S. Coe was Chairman), to whom had been referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders, the debt of the State of Tennessee was fully discussed, with the view of ascertaining and determining what a fair and equitable adjustment of it would be ; and 339

Whereas, at the conclusion of the conference between the Committee of the Tennessee Legislature and the Committee of Arbiters, the Committee of Arbiters made an award that the debt of the State of Tennessee ought to be re-adjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest : the new bonds to bear interest at six per cent., payable semi-annually and the coupons for interest to be made receivable for all taxes and dues to the State ; and 340

Whereas, The Session of the Legislature expired by constitutional limitation a few days after the award of the Arbiters was rendered, and there was no time to enact a law to give it effect; and

Whereas, it was very generally understood that an extra session of the Legislature would be convened to accept a proposition from the bondholders to compromise the State debt, on the terms of the award of the Committee of Arbitration and to enact a law to fully carry it out, the holders of a large amount of bonds of Tennessee did make and send to the Governor propositions of compromise on the terms of said award, and the Governor did thereafter convene the Legislature in extra session to consider said proposition; and

Whereas, during the sitting of the legislature, the intervention of other parties, proposing and advocating before it other and different terms of settlement than those considered by the Committee of the Legislature and the Committee of Arbitration, and awarded by the latter Committee, and agreed to by the bondholders, was prejudicial to the interests of the State of Tennessee, and to her creditors, in so far as it has delayed a settlement; and

Whereas, the bondholders of Tennessee had neither an agent or any other person to represent them before the Legislature, and fully expected that the Senators and Representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentlemen who had acted as a Committee of Arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly; therefore,

Resolved,—That efforts made by any person who

purported to represent the bondholders of Tennessee 345
were entirely unauthorized, and that the declaration alleged to have been made at Nashville that a settlement could be effected with the bondholders upon a lower basis than that proposed by the Committee of Arbiters, of which Mr. Geo. S. Coe is Chairman, has no foundation in fact, so far as it relates to the great body of bondholders.

Resolved—That while we deplore the attitude assumed by the Legislature, while assembled at Nash- 346
ville in December, toward the bondholders, we believe that it resulted from the influence and unwarrantable interference of other parties than real bondholders, or their representatives.

Resolved—That we have an abiding belief that the people of the great State of Tennesssee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them; the effect of which will be to paralyze the 347
prosperity of the State; subvert its best interests; and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors.

Resolved—That the people of Tennessee be urged to adopt such Legislation as will uphold the honor of the State, and evince proper regard for the high integrity which has has hitherto characterized her citizens.

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Resolved—That a Committee of five be appointed, consisting of Eugene Kelly, John T. Terry (of E. D. Morgan & Co.), J. G. K. Duer (of James G. King's Sons), Peter Geddes (of Geddes & Smith), and Dr. R. S. Moran—Eugene Kelly to be Chairman—to take such action as, in their judgment, may be for the interest of the bondholders, but with the under-

149 standing that no settlement less favorable than the award of the Committee of Arbitration be accepted.

(The envelope in which the above was received, and therewith exhibited is addressed,

"Gov. James D. Porter,
Nashville,
Tennessee.
"C. Amory Stevens."

150 in the handwriting of the said C. A. Stevens, and bears the postmark "New York, Feb. 1, 12 P. M.")

EXHIBIT 13.—J. D. P.

New York, *January* 25, 1878.
32 West Thirty-second street.

151 Dear Sir,—Your favor of the 19th inst. did not reach me immediately, otherwise it would have received an earlier acknowledgement.

In my communication of yesterday, I aimed to state the facts as I understand them. Should you think it proper to publish it, you are, of course, at liberty to do so. If you have any suggestion to offer that will enable me to better state the truth, and prove the sincerity of our motives, I shall be pleased to receive them, and will give them prompt and due
152 consideration.

I am not surprised that you regarded our recent meeting as you have. Indeed, but for the timely remarks of Messrs. Moran, Inman, Swann and myself at that meeting, its action would have seemed less guarded and judicious than it was. Messrs. Terry and Pomeroy may not have intended wrong, but, in my opinion, they misapprehended the situ-

ation in Tennessee when they stated, as they did at 353
our meeting on the 16th, that if the 50 and 6 per cent. proposition had not been offered to that Legislature, the 60 and 6 per cent. would have been adopted by it.

I enclose herewith accounts of the meeting as reported by the *Times*, *World*, *Tribune* and *Herald*. The Baltimore *Sun* of the 17th inst., whose reporter was present, reported in some respects more fully what was said at that meeting. The remarks of Dr. R. S. Moran and Eugene Kelly, as given in that pa- 354
per, are worthy of your notice. I think it but just to Mr. Manning to state that Dr. R. S. Moran represented him, and expressed his sentiments at the meeting.

I also enclose a written copy of the resolutions, in accordance with a resolution passed at the meeting of the Committee of Tennessee Bondholders, held January 19, 1878.

Truly yours,

C. AMORY STEVENS. 355

GOV. JAMES D. PORTER,
Nashville, Tenn.

[NOTE.—Envelope addressed in same hand as letter.

Gov'r JAS. D. PORTER,
Nashville, Tenn.]

Postmark: New York, Jan. 25, 5:30 P. M.

Copy of resolutions passed at a meeting of Ten- 356
nessee bondholders, held at the City of New York on January 16, 1878.

Whereas, On the 8th March, 1877, at a meeting between a committee of five members of the Tennessee Legislature (of which Col. John H. Savage was Chairman), and a Committee of Arbitration (of which Mr. George S. Coe was Chairman), to whom

had been referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders, the debt of the State of Tennessee was fully discussed, with the view of ascertaining and determining what a fair and equitable adjustment of it would be; and

Whereas, At the conclusion of the conference between the Committee of the Tennessee Legislature and the Committee of Arbiters, the Committee of Arbiters made an award that the debt of the State of Tennessee ought to be readjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest; the new bonds to bear interest at six per cent., payable semi-annually, and the coupons for interest to be made receivable for all taxes and dues to the State; and

Whereas, The session of the Legislature expired by constitutional limitation a few days after the award of the arbiters was rendered, and there was no time to enact a law to give it effect; and

Whereas, It was very generally understood that an extra session of the Legislature would be convened to accept a proposition from the bondholders to compromise the State debt on the terms of the award of the Committee of Arbitration, and to enact a law to fully carry it out, the holders of a very large amount of the bonds of Tennessee did make and send to the Governor propositions of compromise on the terms of said award, and the Governor did thereafter convene the Legislature in extra session to consider said proposition; and

Whereas, During the sitting of the Legislature, the intervention of other parties proposing and advocating before it other and different terms of settlement than those considered by the Committee of the Legislature and the Committee of Arbitration, and awarded by the latter committee, and agreed to by the bondholders, was prejudicial to the interests

of the State of Tennessee, and to her creditors, in so far as it has delayed a settlement; and

Whereas, The bondholders of Tennessee had neither an agent nor any other person to represent them before the Legislature, but confided in the Legislature and fully expected that the senators and representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentlemen who had acted as a committee of arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly; therefore

Resolved, That efforts made by any persons who purported to represent the bondholders of Tennessee were entirely unauthorized, and that the declaration alleged to have been made at Nashville that a settlement could be effected with the bondholders upon a lower basis than that proposed by the committee of Arbiters, of which Mr. George S. Coe is chairman, has no foundation in fact, so far as it relates to the great body of bondholders.

Resolved, That while we deplore the attitude assumed by the Legislature, while assembled at Nashville, in December, towards the bondholders, we believe that it resulted from the influence and unwarrantable interference of other parties than real bondholders or their representatives.

Resolved, That we have an abiding belief that the people of the great State of Tennessee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them, the effect of which will be to paralyze the prosperity of the State, subvert its best interests and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors.

Resolved, That the people of Tennessee be urged to adopt such legislation as will uphold the honor

of the State, and evince proper regard for the high integrity which has hitherto characterized the citizens.

Exhibit No. 13—J. N. P.

Extract from the *N. Y. World*, Jan'y 23d, 1878.)

BANK OF COMMERCE BUILDING,
Room 8,
NEW YORK, January 19, 1878.

At a meeting of the Committee of Tennessee Bondholders.

Present—Eugene Kelly (Chairman, Dr. R. S. Moran, J. F. Terry, Peter Geddes, and J. G. K. Duer,—it was

Resolved, That a written copy of the resolutions passed at the meeting of Tennessee Bondholders, held Jan'y 16, 1878, be sent to Governor Porter, and that copies of the same be printed for general distribution, It was also

Resolved, That all holders of Tennessee bonds be requested to communicate with Mr. Peter Geddes, 31 Nassau street, room No. 8, New York, one of said committee. It is the desire of the committee to promote co-operation among the creditors. Prompt replies from bondholders will facilitate the action of this committee.

C. AMORY STEVENS,
Secretary.

Exhibit No. 13—J. N. P.

("*N. Y. World*, Jan. 17, '78.)

TENNESSEE'S DEBT.

WHAT THE BONDHOLDERS SAY ABOUT THE LEGISLATURE'S ACTION.

A meeting of holders of bonds of the State of

Tennessee, was held yesterday afternoon, at the of- 369
fice of John B. Manning, No. 14 Wall street. The call was signed by E. D. Morgan & Co., Brown Brothers & Co., Eugene Kelly, Geddes & Smith, James G. King's Sons, A. H. Pomeroy, George W. Stanton and C. Amory Stevens.

About thirty-five gentleman were present, representing from $8,000,000 to $10,000,000 of the bonds. The total issue of the State Bonds, with accrued interest, aggregates, in round figures, $23,000,000.

Mr. Eugene Kelly was made chairman. He at 380
once called upon Mr. A. H. Pomeroy to present the resolutions, and, without opposition, the following were adopted, with a preamble which, in substance, recites the action taken by the Legislature of Tennessee, and also that of persons endeavoring to effect a settlement on a different basis than that desired by the bondholders :

Resolved, That the efforts of any person who purported to represent the bondholders of Tennessee were entirely unauthorized, and the declaration, al- 371
leged to have been made at Nashville, that a settlement could be effected with the bondholders upon a lower basis than that proposed by the Committee of Arbiters, has no foundation in fact, so far as it relates to the great body of bondholders.

Resolved, That while we deplore the attitude assumed by the Legislature, during the Special Session, towards the bondholders, we believe it resulted from the influence and unwarrantable interference of other parties than real bondholders or their rep- 372
resentatives.

Resolved, That we have an abiding belief that the great State of Tennessee will not, by the rejection of honest claims which it is abundantly able to pay, suffer a stigma long to rest upon it, the effect of which will be to paralyze the prosperity of the State, subvert its best interests and engender that demor-

373 alization which must ultimately result in loss to its citizens even far greater than to its creditors.

Resolved, That the people of Tennessee be urged to adopt such legislation as will uphold the honor of the State and evince proper regard for the high integrity which has hitherto characterized its citizens.

The first resolution was directed in part towards the Bond Funding Association, an account of the labors of which was given in *The World* of yes-
374 terday. It was also, it is thought, intended to hit some of those present who had, after the 60 per cent. bill failed to pass the Special Session of the Tennessee Legislature, informed the Governor, or some of the legislators, that they would take 50 per cent.

As the 60 per cent. award has fallen through, the question arose as to what should be done next. Mr. C. A. Stevens, as Trustee of the estate of Calvin Stevens, read his correspondence with the Governor
375 of Tennessee, and others read dispatches showing what they had done. Mr. Albert Crane offered a resolution to the effect that since negotiations had been broken off bondholders should resolve to take nothing less than 100 cents on the dollar. He thought the bondholders ought to stand on their dignity. The State was able to pay, and eventually would be obliged to. Mr. Pomeroy followed, saying he wished the matter of a compromise had never been broached, and cited the case of Illinois,
376 whose bonds were at one time worth only five or six per cent., but she now enjoys as good credit as any State. He thought it would have been the same with Tennessee if she had been let alone. Mr. Kelly replied that he did not think the cases were parallel, so far as present action was concerned. The majority of bondholders had expressed their willingness to take less than par for their bonds,

and he thought they ought not to demand more 377
than they had offered to compromise for. Mr. Peter Geddes, who represented Scotch bondholders, and who has recently visited the State to study the subject, was also opposed to any such expression, as likely to invalidate any progress that had been made. The Rev. Dr. Robert Moran, who has also studied the subject in the State, agreed with the preceding speaker, and said that with a new legislature he felt sure the proposed compromise could be effected. This counsel prevailed. and the matter 378
was settled by the adoption of a resolution offered by Mr. J. T. Terry, of E. D. Morgan & Co., which provided for the appointment of a committee of five, of which the chairman of the meeting should be chairman; this committee to take such action as its judgment may dictate. Messrs. Eugene Kelly, Peter Geddes, John T. Terry, Rev. Robert D. Moran, of North Carolina, and Mr. Duer, of James G. King's Sons, were appointed such a committee."

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(Clippings from the *New York Herald* of the 17th January, 1878, the *New York Tribune* of the same date, and the *New York Times* of the same date, all of similar import to the above, are also attached to the deposition of Jas. C. Porter, now on file in the United States Court at Memphis, Tenn.)

EXHIBIT No. 14.—J. D. P. 380

JANUARY 31st, 1878.

C. AMORY STEVENS, Esq., New York:

Dear Sir:—I have received your communications of the 24th and 25th inst., with copy of resolutions adopted at the late meeting of the creditors of Tennessee.

381 I have no comment to make upon the action of the creditors, except to reiterate my communication of the 19th inst., addressed to Mr. Manning, a copy of which was furnished to yourself.

I have the honor to be,
Very respectfully,
JAS. D. PORTER.

EXHIBIT No. 15.—J. D. P.

382

JANUARY 19th, 1878.

Mr. JNO. B. MANNING, New York:

Sir—I have read the proceedings of the meeting of the creditors of the State of Tennessee, held at your offices on the 16th inst., when it was resolved that no settlement of the debt would be accepted on a lower basis than sixty cents.

In a special message to the Legislature of Tennessee, delivered on the 12th of December last, I
383 recommended the compromise of the public debt upon a basis of fifty per cent. This was done upon the authority of a number of the large creditors of the State communicated to me by telegraph. Among others, a telegram was received from Mr. C. Amory Stevens, the Trustee of the estate of one of the largest creditors, in which he proposed "to take fifty cents on the dollar," and urged me to submit the proposition to the Legislature, and gave expression to the opinion that his dispatch "repre-
384 sent the sentiment of most of the investment holders," and from yourself I received the following telegram:

"NEW YORK, December 10th, 1877.

"To His Excellency, JAS. D. PORTER,
"Governor of Tennessee:

"On behalf of clients, I offer to accept for bonds and

"interest at fifty per cent. new six per cent. consols 385
"with first coupon payable July, 1878, and if not
"then, January, 1879, I beg you to lay this before
"the Legislature.

"JOHN B. MANNING."

This with others of similar import was submitted to the Legislature in good faith and in the honest belief, founded upon assurance made by the creditors whose correspondence was communicated to the Legislature that if this offer was adopted by the 386
State that it would be generally acceptable to the creditors. At the meeting referred to, no allusion was made to your agency in the business, and your own silence—coupled with the action of the creditors at the meeting before mentioned, is a reflection upon my own character and conduct, and puts me in the attitude of trifling with a great question, by recommending a compromise without the assent of the creditors, after assuming that they had a right to a hearing. 387

If this compromise had been adopted by the Legislature the taxpayers of the State would, in my opinion, have ratified it and accepted it as a final adjustment of the question. As it is, public opinion, as represented by those who favored it, has settled upon it as the basis of a future settlement. For this, yourself and those who acted with you are responsible, and you cannot complain if there is no reaction in public sentiment responsive to the resolutions adopted at the late meeting of the creditors. 388
If this meeting had been held in December last its moral influence would have been of incalculable benefit in the assurance that it would have carried to the minds of members of the Legislature that they were dealing directly with the creditors of the State. Then they would not have been confronted at every legislative step and misled by a lot of spec-

389 ulators and adventurers whose aspiration was a bear movement, out of which it is believed they made many thousands of dollars.

I will send a copy of this communication to Mr. Stevens.

I have the honor to be,
Very respectfully,
JAS. D. PORTER.

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EXHIBIT 16.—J. D. P.

NEW YORK, January 24, 1878.

We, the undersigned, who sent the dispatches alluded to in the foregoing letter of Mr. Stevens, heartily concur in the sentiments expressed by him.

INMAN, SWANN & Co.
JNO. B. MANNING.

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EXHIBIT 17.—J. D. P.

Office of JOHN B. MANNING.

Member of the New York Stock and Gold Exchange. } 14 Wall St., New York, *Nov.* 1, 1877.

His Excellency, JAS. D. PORTER,
Governor of Tennessee, Nashville, Tenn.:

Sir,—I have taken the liberty of telegraphing you
392 to-night as follows: "Am authorized on behalf of large number of Tennessee bondholders to submit proposition of compromise by accepting sixty cents on dollar for bonds and past due coupons, payable in new six per cent. consols, and ask you to convene Legislature to carry out compromise," which I now beg to confirm.

From a letter received from your City I inferred

that a proposition from the bondholders would be 393
acceptable, and that the Legislature would be called together to consider it. There are a great many holders of bonds who feel that Tennessee has the ability to pay her debt in full. Still, they are willing to accept a compromise rather than let the matter remain unsettled longer.

Trusting the above will be favorably received, I have the honor to be,

Yours respectfully,

JNO. B. MANNING. 394

EXHIBIT 18.

Office of JOHN B. MANNING,

Member of the New York Stock & Gold Exchange.

14 WALL ST, NEW YORK,
Nov. 8th, 1877.

His Excellency, JAMES D. PORTER, 395

Governor of Tennessee, Nashville, Tenn.:

SIR:—I beg to acknowledge your favor of 3d inst. At the time I telegraphed you I was unable to say how many thousand bonds of Tennessee I represented. I suppose I have consulted with some $2,000,000 worth, and they seem satisfied to accept a compromise of 60%, while they would at the same time feel grateful for a better settlement. People have a delicacy in stating the amount of Tennessee 396
bonds they hold, fearing it might injure their credit, but this fear, I hope and trust, will be done away with, now that Tennessee is coming forward to settle her debts to the best of her ability. I understand *you* are in favor of paying dollar for dollar, and I wish all your citizens were of the same mind.

By this registered letter I send you the following

397 Tennessee coupons which were left in my hands by my clients for collection, and which I was unable to get in when the State was paying. I therefore pray that you forward me a check for same, viz.:

1 @ 25, 1,584, July, 1875.....	$ 25 00
11 @ 30, July, 1875, 5,933, 4,428, N. S., 2,892, N. 8,763, 10,050, 6,989, 10,123, 8,761, 554, 2,985, 567.....	330 00
	$355 00

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Very resp'y yours,
JNO. B. MANNING,
per M. C.

EXHIBIT NO. 19.—J. D. P.

"STATE OF TENNESSEE.

399 We, James D. Porter, Governor, and Charles N. Gibbs, Secretary of State of the State of Tennessee, do hereby certify—pursuant to section 6 of an act entitled 'An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee,' passed February 25, 1869, that Adolphe Schreiber, James Fentress and Lewis V. F. Randolph (trustees under a certain mortgage made the eighth day of November, 1877, between the Chicago, St. Louis and New Orleans Railroad Company, of
400 the first part; the New Orleans, Jackson and Northern Railroad Company, of the second part; the Central Mississippi Railroad Company, of the third part, and the said Trustees of the fourth part), as Trustees for the purchasers and holders of the bonds to be issued under said mortgage, numbered from number one to number one thousand one hundred and ninety-nine, inclusive, have paid in and deliv-

ered up bonds and coupons of the State of Tennes- 401
see as authorized by the act aforesaid equal in amount to the indebtedness heretofore created by the Mississippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company, and which is a first lien on the railroad and property heretofore known as the Mississippi Central Railroad, lying in the State of Tennessee, and has become a debt of, and a first lien upon the property of the Chicago, St. Louis and New Orleans Railroad Company, its successor, in the State of 402
Tennessee; that such payment was made by and with the written consent of the Board of Directors of the Central Mississippi Railroad Company, and of the Chicago, St. Louis and New Orleans Railroad Company, as allowed by the Statutes of Tennessee, and that the said Trustees, for and in behalf of the holders of said bonds to be issued under said mortgage to provide and be substituted for the debt of the State of Tennessee so paid, are substituted and entitled to all the liens against said property for the 403
payment of said debt that the State of Tennessee had or has by law.

And we do hereby, as provided and authorized in the Act of February 25, 1869, and acts amendatory thereof, in the name of the State of Tennessee and in her behalf and for the considerations above named, assign and transfer to the said Adolphe Schreiber, James Fentress and Lewis V. F. Randolph, trustees as aforesaid, all the debt and lien of the State of Tennessee on the railroad 404
and property heretofore owned in said State by the Mississippi Central and Tennessee Railroad Company, and on all the railroad property in said State heretofore known as the Mississippi Central Railroad, now known as the Chicago, St. Louis and New Orleans Railroad, which said State has or had on the same by reason of the internal improvement

laws of said State, and the fact that said State had granted aid to said railroads under the statutes thereof, with all the rights, privileges and powers which said State has or had for enforcing said lien; the object being to substitute the said trustees for the State, and to place them in the same position and with the same rights which the State of Tennessee had previous to and before the said payment and delivery of State bonds, with full power to enforce the same in any and every manner in which the said State may or might.

This the 28th of November, A. D. 1877.

In witness whereof, I, James D. Porter, Governor of the State of Tennessee, have hereto set my hand and caused the great seal of the State of Tennessee to be hereunto affixed, this 28th of November, 1877.

(Sd.) JAS. D. PORTER,
Governor.

In witness whereof, I, Chas. N. Gibbs, Secretary of State, have hereto set my hand and the great seal of the State of Tennessee, this November 28, 1877.

(Sd.) CHAS. N. GIBBS,
Sec. State.

EXHIBIT No. 20.—J. D. P. 409

NEW YORK, Jan. 24, 1878.
32 West 32d st.

To His Excellency GOV. JAS. D. PORTER,

Nashville, Tenn.:

Sir—I thank you for your outspoken views, as expressed in your favor of the 19th inst. It enables me to correct a misapprehension which you manifestly entertain, and to place my associate and self 410 correctly before you and the public.

In behalf of myself and others who entertained similar views, I offered and urged the 50 and 6% settlement; not that I thought it just to ourselves, or honorable to the State of Tennessee. Indeed, I believed then, as I do now, that anything less than 60 and 6%, the arbitration award, would be neither just nor honorable.

I judged, however, from the reported proceedings of the Legislature that the passage of the sixty and 411 six bill was then highly improbable. At the same time I had what I then deemed good reasons to believe that if the creditors would only modify their proposition by substituting 50 for 60 in the bill, the Legislature would very gladly accept it.

It was under this impression that a few of us, consulting together, thought it expedient under the circumstances, to advise your Excellency that such a modification would, in our opinion, be accepted by the creditors. This modification was proposed, 412 however, without any authority from the great majority of the bondholders, but it was thought by those of us who made it, that an adjustment, even on the basis of 50 and 6% would be accepted by most of the investment holders, rather than that the Legislature should adjourn without final settlement of the debt. I believe even now, if the Legisla-

ture had promptly accepted our proposition, the majority of the bondholders would have concurred in it. But, while your Excellency fully appreciated our honest efforts, the Legislature did not respond to them in the spirit in which they were made. A certain few wisely and eloquently endeavored to uphold the honor of the State by doing justice to her creditors. The majority, however, seemed to regard our increased liberality very much in the light of gratitude as defined by a French philosopher—"a lively appreciation of favors to come." They pressed for even further concessions. They treated "the pesky bondholder" as a public enemy, an outside barbarian, whose rights were unworthy of recognition. They forgot, however, the solemn promises which the State had made when she sought the capital of her creditors to carry on those internal improvements which have enhanced the value of property in Tennessee far beyond the amount borrowed.

Under such circumstances it would certainly seem quite natural and right that the great majority of bondholders who never offered settlement at less than 60 and 6% should adhere to the Arbitration Award, even more firmly than before, while those of us who did offer even further concessions to that Legislature, remembering the spirit in which it was received, are determined never again to renew it. There is now prevailing one unanimous sentiment among the bondholders—60 and 6% or repudiation is the question for Tennessee to decide.

As your Excellency has very properly suggested, an earlier public expression on the part of the bondholders themselves would have been of incalculable benefit. But we were deceived. The same "Funding Association" that befogged the Tennessee Legislature also befogged us. As soon as we discovered how misrepresented we had been we gave public ex-

pression to our views. And that the public may 417
more fully know who are the *bona fide* creditors seeking their honest dues, and who are of the Syndicate Ring seeking only to prey on the misfortunes of both creditor and debtor, it is proposed, at an early day, to even more clearly expose the inner workings of the "Funding Association, Limited." By its acts it has proved itself one of the most mercenary and unprincipled conspiracies that has ever disgraced the annals of a people.

I presume that your Excellency's allusion to "a 418
bear movement, out of which many thousands were made," applies to the Syndicate Ring. If intended as applicable to others, allow me to assure you that it is a mistake. I am well aware that a stranger, whose name we have been unable te ascertain, asserted, at our meeting of the 16th inst., that he so regarded the dispatches, on the strength of which you reconvened the Legislature. There may have been seeming cause for suspicion on the part of those who bought the bonds at 47 and sold them at 419
34; but it was an unfounded suspicion. A more false statement could not have been uttered, if it was intended for my associates and self, whose dispatches you submitted to the Legislature.

Allow me to add, that whatever difference of opinion may exist in other respects, I think that I may safely say that there is one point on which there is unanimity of opinion. The creditors of Tennessee fully appreciate the earnest and sincere efforts of your Excellency in support of their rights, 420
while Tennessee herself must ever gratefully remember you as the devoted champion of her honor and integrity.

With assurances of respect and esteem, I remain,

Very respectfully,

C. Amory Stevens.

DEPOSITION OF M. T. POLK.

1

United States Circuit Court,

WESTERN DISTRICT OF TENNESSEE, AT MEMPHIS, TENNESSEE.

CALVIN AMORY STEVENS, FOR HIMSELF AND OTHERS

vs.

THE CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY.

2

No. 317.

Deposition of M. T. Polk, a witness for defendant, taken before me in the above named cause, in the presence of James Fentress, solicitor for defendants, and S. Watson, Jr., solicitor for complainants. 3

Said witness, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says:

Q. 1. State your residence, and also what office, if any, you now hold in Tennessee, and how long you have held it?

A. I live in Nashville, Tennessee, and am the present Treasurer of the State; my former residence was in Bolivar, Tennessee, where I am now. 4

Q. 2. How long have you been Treasurer of Tennessee?

A. Since the 7th day of February, 1877.

Q. 3. Has any holder of the bonds of Tennessee, prior to the beginning of this suit, applied to you, as such Treasurer, at any time, to set apart any of the revenues of the State, as provided in section 3 of the Funding Act of 1873: if so, when and who?

A. No one has made such application.

Q. 4. Has any such application been made since the beginning of this suit, or at any time?

A. No.

Q. 5. What amount of State revenue has come into the Treasurer's office of Tennessee each year since you have been Treasurer, which might have been set apart under the third section of the Funding Act of 1873? If you have not the exact official figures with you, give your best recollection.

A. I prefer to give exact figures, and can only do so by referring to my books in my office at Nashville, which I will do, and send the sworn certificate next week; if the third section of the Funding Act of 1873 contemplated appropriating all the revenue received into the Treasury, first, to the payment of interest on the funded and registered bonds of the State, then to the payment of interest on bonds held by educational institutions, and the school fund of the State, the Treasurer received and could have paid out during 1877, $1,320,920.97; for 1878, $656,528.84; for 1879, $491,931.89.

Q. 6. Did any holder of Tennessee bonds, ever claim, prior to the bringing of this suit, so far as you know, that any bond issued by the State of Tennessee was a lien, or secured by a lien on any railroad in Tennessee?

A. Never; the claim was new to me.

Q. 7. State what balance, if any, was in the Treasury of the State of Tennessee on the 24th of January, 1879?

A. On the 24th of January, 1879, there was in the Treasury at the close of business, $411,408.64.

MARSHALL T. POLK,
Treasurer of Tennessee.

STATE OF TENNESSEE,
Davidson County.

I, Lewis T. Baxter, clerk U. S. Ct., do hereby certify that the foregoing five pages were taken before me, as stated in the caption, and that all the answers were written by the witness himself, and that when the same was read over to him, he made oath in due form of law that the same was true.

In witness whereof, I have hereunto set my hand and official seal, this the 31st day of March, 1880.

LEWIS T. BAXTER,
Clerk.

Circuit Court, U. S. Middle Dist., Tenn. Seal.

1

DEPOSITION OF JAMES L. GAINES.

IN THE

Circuit Court of the United States,

FOR THE WESTERN DISTRICT OF TENNESSEE, AT MEMPHIS, TENNESSEE. 2

CALVIN AMORY STEVENS, FOR HIMSELF AND OTHERS,

versus

THE CHICAGO, ST. LOUIS & NEW ORLEANS R. R. CO., ET AL. 3

No. 317.

The deposition of James L. Gaines, witness for defendant, taken by agreement of parties in the presence of JAMES FENTRESS, solicitor for defendants, and S. WATSON, Jr., solicitor for complainant, on the 24th day of March, 1880, at Nashville, Tennessee. 4

The said witness having been duly sworn to speak the truth the whole truth and nothing but the truth, deposes and says:

Question 1 by defendant. What office do you now hold in Tennessee, and how long have you held it?

Answer. I hold the office of Comptroller of the State of Tennessee, and have held it since February, 1875.

Q. 2. Was a Receiver appointed by the State or any of the authorities thereof of the Mississippi Central Railroad; and, if so, when, and who was appointed?

A. Governor James D. Porter appointed R. P. Neely, Receiver of the Mississippi Central Railroad Company, in February, 1876.

Q. 3. How long did said State's Receiver remain in possession of said Mississippi Central Railroad; and what was the gross amount he collected as Receiver for the State during the time the State held said railroad?

A. The State's Receiver remained in possession of said Mississippi Central Road from the date of his appointment until the settlement of the said road's indebtedness to the State, on 28th November, 1877; a report of his transactions, as Receiver, was made by him and filed in the Comptroller's office, but the same was delivered on demand to a Legislative Committee of the General Assembly of 1879, and was never returned to the office by said committee; I am, therefore, unable to state the gross amount reported collected by him as Receiver, during the time the State held said railroad.

Q. 4. How much actual money, if any, did the Receiver for the State aforesaid pay over to you as Comptroller; give amounts and date of such payments?

A. The Receiver aforesaid did pay over to me as Comptroller, the total sum of one hundred and ten thousand dollars; the several payments aggregating this total, were made as follows:

May 20, 1876,	$10,000	Dec. 11, 1876,	$10,000
Aug. 10, "	5,000		
Sept. 7, "	5,000	Dec. 26, 1876,	10,000
" 13, "	5,000	Jan. 10, 1877,	10,000
Oct. 18, "	5,000	" 25, "	10,000
Nov. 9, "	5,000	Feb. 14, "	10,000
Dec. 4, "	5,000	" 24, "	10,000
		Apr. 11, "	10,000

Q. 5. What was done with said $110,000 in money so 9
paid into the State by said Receiver?

A. It was paid into the State treasury like any other funds or revenue due the State on my receivable warrant to the State Treasurer, who gave his receipt to the Receiver.

Q. 6. Was there any proposition to settle the interest past due by Mississippi Central Railroad with the State, or propositions looking to relieving the said railroad from the State's Receivership; if so, did the State authorities accept such proposition? 10

A. Propositions were made to settle the past due interest and the sinking fund account of the Mississippi Central Railroad, but the State authorities declined to accept said proposition or to surrender the road until the settlement of the whole debt due the State by the road.

Q. 7. Were any representations made by the State authorities of Tennessee to the purchasers of the Mississippi Central Railroad, prior to their purchase, as to State's lien, substitution bonds, etc.; was any suggestion made as to how the purchaser might discharge the debt 11
claimed by the State against said railroad under her internal improvement laws; if so, state them?

A. I remember conversations had with Governor Porter in this connection, and we agreed, and it was so represented to the representatives of the purchasers, that the State had an exclusive lien on the road and its property to the extent of its indebtedness to the State, and that on payment of this indebtedness the purchasers would be substituted to the State's lien; that said indebtedness could be paid in any series of the bonds of 12
the State which were then at a discount in the market.

Q. 8 Did said purchasers afterwards buy the Mississippi Central Railroad; and if so, did they act upon the representations of the State authorities aforesaid; if so, state what was done?

A. The said parties did purchase the Mississippi Central Railroad on these representations, and under mort-

gage of 8th November, 1877, made by Chicago, St Louis & New Orleans Railroad to Adolphe Schreiber, James Fentress and L. V. F. Randolph, Trustees, issued eleven hundred and ninety-nine mortgage bonds, for one thousand dollars each, which they delivered to me as Comptroller of the State of Tennessee, and they also delivered to me eleven hundred and ninety-nine bonds of the State of Tennessee; these State bonds were canceled by me, and filed in the Comptroller's office; the mortgage bonds were redelivered to the Trustees under said mortgage after having been endorsed by me, on the face of each of said bonds, in the following words:

"STATE OF TENNESSEE,
Comptroller's Office.

"I certify that the Chicago, St. Louis & New Orleans "Railroad Company has this day liquidated the indebt- "edness of the Mississippi Central Railroad Company to "the State of Tennessee for State bonds issued pursuant "to law, under the statutes of the said State, to establish "internal improvements, and that this bond is substituted "for the same amount of indebtedness of the said railroad "company to the State, and the holder of the said bond "is hereby subrogated to and secured by the lien held by "said State, and to all the other rights and remedies re- "served by the State in the statutes upon the railroad "and property of the said Mississippi Central Railroad "Company. This bond is one of 1,199 bonds, and is ex- "ecuted and issued, and by virtue of law takes the place "of a bond of the State of Tennessee, and is a First "Mortgage Bond.

"November 28, 1877.

"JAS. L. GAINES,

"*Comptroller of the State of Tennessee.*"

Q. 9. What State officers, if any, decided as to whether the State bonds presented by said Trustees or

the defendant, the C. St. L. & N. O. R. R. Co., to you in payment of said debt, were the proper bonds to be so received under the Internal Improvement Acts of Tennessee? 17

A. By the Governor, Secretary of State, and myself as Comptroller, it was decided that said State bonds were the proper bonds to be received in payment of the said debt, of the Mississippi Central Railroad, and the bonds were so received.

Q. 10. What relation did the Mississippi Central Railroad spoken of above, bear to the Mississippi Central & Tennessee Railroad Company? 18

A. The railroad was known as the Mississippi Central & Tennessee Railroad, up to the year 1859, and after 1859, the same railroad was known as the Mississippi Central.

Q. 11. Did you, as Comptroller, execute and deliver a receipt for the amount of Tennessee bonds paid you as aforesaid, and in such receipt mention the $110,000 paid the State by the Tennessee Receiver; if so, file a true copy of said receipt with this your deposition, making it 19 an exhibit thereto?

A. I did execute and deliver such receipt, and herewith file a correct copy of the same, marked Exhibit No. 1.

Q. 12. Did the Governor and Secretary of State execute and deliver an acquittance and assignment to said defendant, the Chicago, St. Louis & New Orleans R. R. Co., or its Trustees, of date 28th of November, 1877?

A. The Governor and Secretary of State did execute and deliver an acquittance and assignment to said de- 20 fendant, the Chicago, St. Louis & New Orleans R. R. Co., or its Trustees, of date 28th November, 1877?

Q. 13. Do you know Peter Geddes of New York, member of Geddes & Smith, and also member of the "Committee of Tennessee Bondholders?"

A. I do.

Q. 14. Did you receive a letter from said Peter Geddes,

21 dated August 1st, 1877, and one of August 23d, 1877, and one of August 27th, 1877, and one of August 29th, 1877; if so, please fiel each of said letters, and make them part of this your deposition?

A. I did receive letters from the said Peter Geddes, of dates named, and herewith file copies of same, marked Exhibits Nos. 2, 3, 4 and 5 respectively.

Q. 15. In his letter aforesaid of August 1st, 1877, to you, as Comptrollor, he says:

"The parties in interest will be prepared to pay off the
22 "debts of the Mississippi Central to your State, just as "soon as it is safe for them to do so."

What did he mean by "debts of the Mississippi Central to your State," and who did he mean by "the parties in interest?"

A. By "debts of the Mississippi Central to your State" he meant the amount of bonds issued by the State in aid of said road under the Internal Improvement Acts; and by "the parties in interest" he meant the parties who proposed to purchase the road.

23 Q. 16. In Peter Geddes' letter to you of August 27th, 1877, he says: "I have just had an interview with Mr. "Osborn, who reports that in thirty days the parties in "whose interest the Mississippi Central was bought in "the other day will receive a confirmation of their pur- "chase. It is quite well understood here that so soon as "they can do so with safety they will pay off the lien of "the State of Tennessee on the Mississippi Central, and "*that* they now think they can safely pay it off sixty "days hence." Who is the Mr. Osborn referred to in
24 said letter?"

A. William H. Osborn is President of the Chicago, St. Louis & New Orleans Railroad Company, who executed the said mortgage of 8th November, 1877, as such President.

Q. 17. Is Peter Geddes, of whom you have spoken, the Peter Geddes who is a member of the "Committee of Tennessee Bondholders" of New York, of which Committee complainant was the Secretary in 1877?"

A. He is. 25

Q. 18. On the 28th November, 1877, when the State of Tennessee, through its officers, required the payment of $1,199,000 and interest from the purchasers of the Mississippi Central Railroad Company, how many of the bonds claimed to have been originally issued to said road or its predecessor, the Mississippi Central & Tennessee Railroad Company, were before that time paid and then in possession of the State canceled, and how many were then outstanding?

A. I cannot state positively the number of the bonds 26
outstanding November 28th, 1877, which had originally been issued to the Mississippi Central Railroad Company, but I am satisfied that at least half of them had been paid in and canceled and deposited in the archives of the State.

Q. 19. Do you know whether the holders of bonds of the State of Tennessee funded their past due coupons and past due bonds under the terms of the Funding Act of 1865; and if so, were the coupons of different series of bonds, capitol, hermitage, agricultural bureau, turnpike 27
bonds and bonds issued in aid of railroads, kept separate, or were they confused in the new bonds issued therefor?

A. From the number and amount of the bonds issued under the Funding Act of 1865, I am satisfied that nearly or quite all the past due interest on all the then outstanding bonds of the State was funded, including the coupons from all the series of bonds issued prior to the war; the coupons from the bonds issued in aid of railroads were not kept separate from the coupons of the bonds issued for other purposes; as a matter of fact the 28
record of the funding transactions under the said Act of November, 1865, does not show what particular coupons were funded, but simply shows that so many coupons, amounting to a certain sum, say $1,000, or the multiple of $1,000, were funded into one bond or into as many bonds as there were multiples of $1,000.

Q. 20. Please state, if you know, whether the holders

29 of all series of bonds of Tennessee accepted the provisions of the Funding Act of 1873, and funded their past due coupons and registered their bonds under said act?

A. They did.

Q. 21. Please examine the funding books and records of the office of Comptroller of Tennessee and state who had bonds 3623, 3734, 3748, 3826, 3879, 4630, 4652, 4745, 4840, 5511, each issued January 1st, 1856, except last bond, and that January 1st, 1857, registered under the Act of 1873 aforesaid, and the date when each was reg-
30 isterd?

A. Below I give a statement showing the date of registration of each of the several bonds mentioned, and for whom each bond was registered:

No. 3623 was registered March 24, 1874, for Miller & Franklin.
" 3734 " Nov. 20, 1878, " Jno. B. Manning.
" 3748 " Nov. 20, 1878, " Jno. B. Manning.
" 3826 " Dec. 18, 1873, " Newton White, Pulaski, Tenn.
" 3879 " Nov. 19, 1873, " First National Bank, Nashville, Tenn.
" 4630 " Dec. 19, 1874, " Carolina Life Insurance Company.
" 4652 " May 1, 1874, " Lord & Taylor.
" 4745 " April 1, 1874, " Whitehouse & Co.
" 4840 " Feb. 11, 1874, " First National Bank, Nashville, Tenn.
31 " 5511 " Jan. 13, 1874, " E. Goodwin, N. Y.

Q. 22. Were there not State bonds authorized and actually issued under several different acts passed at the session of the Tennessee Legislature of 1851-2?

A. There were two or more acts passed at the session of 1851-52 under which bonds were authorized to be issued, and were actually issued.

Q. 23. Please state the amounts of Tennessee bonds and coupons paid by railroads in settlement of their debts under the internal improvement system of Ten-
32 nessee, beginning with the payment by the Louisville & Nashville Railroad Company in 1865; I do not mean sinking fund and interest, but final settlement by railroads of the debt and lien claimed by the State; also the assessed values of property in Tennessee in January, 1852, and in 1860, and in 1867; and the amount of bonds of State outstanding in January, 1852; and whole bonded debt of the State prior to settlement with railroads?

A. Following is a statement of the names of the several railroads which retired their debts to the State of Tennessee, and amount of same, *exclusive of sinking fund and interest;* also the names of the several railroads that were sold by the State, and the amount brought by each: 33

RAILROADS THAT RETIRED THEIR DEBTS, AND THE AMOUNT OF SAME.

Louisville and Nashville, Nov. 17, 1865...	$560,500.00
East Tennessee, Virginia and Georgia, Aug. 1, 1870	3,916,315.00
Nashville and Decatur, March, 1871	2,465,176.00
Memphis and Ohio, May 25, 1871	2,396,110.00
Mobile and Ohio, Jan. 1, 1872	1,785,246.00
Nashville and Chattanooga, Jan. 1, 1874..	364,165.00
Memphis and Charleston, July 25, 1877...	1,671,916.25
Mississippi Central, Nov. 28, 1877	1,199,180.00
Mississippi and Tennessee, Jan. 16, 1878..	299,714.00

34

RAILROADS THAT WERE SOLD BY THE STATE, AND THE AMOUNT BROUGHT BY EACH. 35

Edgefield and Kentucky	$900,000
Cincinnati, Cumberland Gap and Charleston.	300,000
Knoxville and Kentucky	350,000
McMinnville and Manchester	300,000
Winchester and Alabama	300,000
Rogersville and Jefferson	23,000
Nashville and Northwestern	2,400,000
Knoxville and Charleston	105,000
East Tennessee and Western North Carolina.	20,000
Memphis, Clarksville and Louisville	1,700,000
Tennessee and Pacific	300,000

26

The assessed value of taxable property in the State of Tennessee:

For the year 1852, was.....$177,420,305

(Including slaves valued at $63,027,716.)

of all series of bonds of Tennessee accepted the provisions of the Funding Act of 1873, and funded their past due coupons and registered their bonds under said act?

A. They did.

Q. 21. Please examine the funding books and records of the office of Comptroller of Tennessee and state who had bonds 3623, 3734, 3748, 3826, 3879, 4630, 4652, 4745, 4840, 5511, each issued January 1st, 1856, except last bond, and that January 1st, 1857, registered under the Act of 1873 aforesaid, and the date when each was registerd?

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Q. 22. Were there not State bonds authorized and actually issued under several different acts passed at the session of the Tennessee Legislature of 1851–2?

A. There were two or more acts passed at the session of 1851–52 under which bonds were authorized to be issued, and were actually issued.

Q. 23. Please state the amounts of Tennessee bonds and coupons paid by railroads in settlement of their debts under the internal improvement system of Tennessee, beginning with the payment by the Louisville & Nashville Railroad Company in 1865; I do not mean sinking fund and interest, but final settlement by railroads of the debt and lien claimed by the State; also the assessed values of property in Tennessee in January, 1852, and in 1860, and in 1867; and the amount of bonds of State outstanding in January, 1852; and whole bonded debt of the State prior to settlement with railroads?

A. Following is a statement of the names of the several railroads which retired their debts to the State of Tennessee, and amount of same, *exclusive of sinking fund and interest;* also the names of the several railroads that were sold by the State, and the amount brought by each: 33

RAILROADS THAT RETIRED THEIR DEBTS, AND THE AMOUNT OF SAME.

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Nashville and Decatur, March, 1871.....	2,465,176.00
Memphis and Ohio, May 25, 1871.....	2,396,110.00
Mobile and Ohio, Jan. 1, 1872.....	1,785,246.00
Nashville and Chattanooga, Jan. 1, 1874..	364,165.00
Memphis and Charleston, July 25, 1877...	1,671,916.25
Mississippi Central, Nov. 28, 1877.....	1,199,180.00
Mississippi and Tennessee, Jan. 16, 1878..	299,714.00

34

RAILROADS THAT WERE SOLD BY THE STATE, AND THE AMOUNT BROUGHT BY EACH. 35

Edgefield and Kentucky.....	$900,000
Cincinnati, Cumberland Gap and Charleston.	300,000
Knoxville and Kentucky.....	350,000
McMinnville and Manchester.....	300,000
Winchester and Alabama.....	300,000
Rogersville and Jefferson.....	23,000
Nashville and Northwestern.....	2,400,000
Knoxville and Charleston.....	105,000
East Tennessee and Western North Carolina.	20,000
Memphis, Clarksville and Louisville.....	1,700,000
Tennessee and Pacific.....	300,000

26

The assessed value of taxable property in the State of Tennessee:

For the year 1852, was.....$177,420,305

(Including slaves valued at $63,027,716.)

37 For the year 1860, it was.....$388,936,794
(Including slaves $115,609,554); and
For the year 1867 the assessed value of the
taxable property of the State was.....$225,393,410
On the 1st of October, 1851, the total bond
liability of the State was.....$3,651,856.66
I have not at hand the official data for the exact amount of the outstanding liability on the 1st January, 1852.
In 1870, prior to the first settlement with railroads under the Act of 1869 and of 1870, the whole bond debt
38 of the State amounted to about $40,000,000.

JAS. L. GAINES.

The complainant's counsel does not desire to ask any questions, and it is agreed by counsel for complainant and defendant that Col. Gaines may file herewith copies of the letters of Peter Geddes instead of the originals, and that said copies may be used as if they were the
39 originals, and to have the same force; but, on request of either party, Col. Gaines agrees to produce said original letters, which he has on file in his office.

JAMES FENTRESS,
Solicitor for Defendants.

S. WATSON,
Solicitor for Complainants.

STATE OF TENNESSEE,
Davidson County.

40 I, E. R. Campbell, Commissioner of the Circuit Court, U. S., for Middle District of Tennessee, do hereby certify that the foregoing deposition of James L. Gaines, of 19 pages, was taken before me as recited in the caption in presence of counsel for complainant and defendant, and that witness wrote his own answers, and the said deposition having been read over to said witness, he made oath in due form of law that the same was true.

In witness whereof, I have hereunto set my hand and 41
seal, this the 24th day of March, 1880.

E. R. CAMPBELL,
Commissioner U. S. Circuit Court,
for the Middle District of Tennessee.

Exhibit No. 1.

STATE OF TENNESSEE. } 42
Comptroller's Office. }

Receiver of the Chicago, St. Louis & New Orleans Railroad Company by the hands of Adolphe Schreiber, James Fentress and L. V. F. Randolph, Trustees, under the first mortgage of said company, the sum of twelve hundred and ninety-three thousand two hundred and thirty dollars, in the bonds and coupons of the State of Tennessee, which, together with one hundred and ten thousand dollars in money, heretofore received from R. P. Neely, Receiver, is in full payment and satisfaction 43
of all indebtedness of the Mississippi Central & Tennessee Railroad Company to the State of Tennessee, and also in full payment and satisfaction of all the indebtedness of the Mississippi Central Railroad Company to the State of Tennessee.

The sum of twenty-three thousand two hundred and fifty-six dollars of the $110,000 paid in money as aforesaid, is in full of taxes on said railroad, its property and appurtenances, due said State of Tennessee for the years 1873, 1874, 1875, and 1876; and the sum of nine hun- 44
dred and thirty-two $\frac{73}{100}$ dollars, is in full of the State tax on said railroad and property for the year 1877.

The payment of the taxes aforesaid, for each of said years is made under protest, the said company insisting that said railroad and property is and was exempt from said taxation, by virtue of the charter of the Mississippi Central & Tennessee Railroad Co., Acts of 1853–4 of

State of Tennessee, chapter 1, sec. 13, and it is agreed that the question as to whether such taxation aforesaid, is valid and legally collectable, or whether said railroad and property was exempt from taxation for said years or either of them (in case the Attorney-General of the State does not advise the refunding of said taxes) without litigation, shall be submitted to Chancellor Cooper, or the Chancery Court of Nashville, Tennessee, and if said railroad and property is held by said court to have been exempt for those years, or said taxes improperly assessed, then the money paid for said taxes shall be refunded to said company, and the fact that said taxes have been paid, shall not put said company in any worse position in any litigation as to this matter than it would have been if said taxes had been refused to be paid, until the legal questions above mentioned were settled.

JAS. L. GAINES,
Comptroller of the State of Tennessee.

Exhibit No. 2.—J. L. G.

(Private.) NEW YORK, August 1st, 1877.

Hon. JAMES L. GAINES,
Comptroller,
Nashville:

Dear Sr,—I think that I may now safely say to you confidentially that the parties in interest will be prepared to pay off the debts of the Mississippi Central to your State just as soon as it is safe for them to do so.

I was amused when I read in the American newspaper the other day the very brief notice of the payment of the debt of the Memphis and Charleston road to the State, which it published. A stranger would conclude that it was published solely to account for your being in New York, about which the public might be concerned—to assure the people of Tennessee that you were not here to pay of the State debt, or anything of that kind.

I have not yet heard from Mr. Smith, and am therefore 49
not able to indicate what view he may take of the conditions upon which Governor Porter says he will call an extra session of the Legislature. I have, however, not changed my own views as to what should be done, but I am more firmly convinced than ever that the proposition of the bondholders should be accepted, or one its equivalent, which I think might be gotten up, offering to settle at say 75 per cent. of principal and interest in 6 per cent. bonds, coupons receivable for all taxes and dues to the State. If any hope were held out that a settlement can 50
he effected at the equivalent of our proposition, say 75c., I would do my best to get all the principal bondholders to make a proposition to settle at that, and I think that with careful handling it could be carried. Of course there are always some who hold back, but I think that the great majority would take 75 per cent., under the name of the equivalent of their proposition already made.

The debts of the railroads to the State may now be regarded as practically settled. What remains is simply 51
a question between debtor and creditor.

Freed from the complications which grew out of these railroad debts, the discussion of the debt question will be very clear and simple henceforward.

If a few of you men of influence and character would unite in an effort to bring about a compromise on the basis of 75 per cent., I think it could be effected satisfactorily to all, while it is very doubtful if an acquiesced in settlement at a lower figure would ever be regarded as other than a forced one by the public and the bond- 52
holders.

The intervention of the so-called arbiters of the Clearing House was the most unfortunate thing that could have happened.

Personally, I have worked hard to save the remnant of Tennessee's once good credit, and I make this last effort to complete the job. If it fails, let it be so. Posterity will ever regret a blunder made now.

53 If you think so advisable, you may convey to the Governor, at your convenience, the substance of what I have said, and let me know what he may have to say in reply.

Very truly yours,

P. GEDDES,

P. O. Box 936.

Exhibit No. 3.—J. L. G.

54

NEW YORK, Aug. 23, 1877.

JAMES L. GAINES, Esq.,

Comptroller:

Dear Sir,—I duly received your esteemed favor of the 8th current.

Since then I learned that the Mississippi & Tennessee Railroad Company have voted to pay off their debt to Tennessee. This practically settles up all advances made
55 by the State to railroad companies, and reduces the whole State debt question to one between the people of Tennessee and the investors in their public debt. What the latter will agree to I cannot say. They may or may not adhere to their proposition of last February.

If the people of Tennessee under any circumstances are liable to do anything disgraceful in regard to their public debt, or permit anything of that kind to be done, of which you seem to entertain fears, should a settlement not be come to this year, and the debt question become
56 one of the issues in the State canvass of next Summer, the inquiry forces itself upon the bondholders, of how much value would the reduced debt of such a people be to the holders of it?

This is a very serious question, in view of the fears you express, and of what I will now only characterize as the extraordinary legislation of last Winter. I shall be happy to hear from you in reply, at your convenience.

Mr. Smith has been travelling since the beginning of July, and hence we do not hear from him. 57

I am,

Very truly yours,

P. GEDDES,
P. O. Box 936.

Respondent's Exhibit No. 4,—J. L. G. 58

(Private.) NEW YORK, August 27, 1877.

Hon. JAMES L. GAINES,
Nashville:

My Dear Sir—I have just had an interview with Mr. Osborn, who reports that in thirty days the parties in whose interest the Mississippi Central was bought in the other day will receive a confirmation of their purchase. It is quite well understood here that so soon as they can do so with safety, they will pay off the lien of Tennessee 59 on the Miss. Central, and that they now think they can safely pay it off sixty days hence.

There is thus little doubt that the last of Tennessee's advances to the railroads within her borders will be paid off early in the fall, thus freeing her and her creditors too, for that matter, from a very troublesome disorder.

Although you do not, in your note of the 8th current, give much reason to hope that a settlement of Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest 60 citizens of Tennessee who must be still in the majority, would much prefer to pay the State debt in *full*, if some plan were submitted which would make it clearly possible for them to do so.

The outstanding bonds of Tennessee are mainly held by investors, by trustees, and Trust Institutions. The "margins" of speculators in and out of Wall Street have

61 long ago disappeared, and the bonds upon which they were held been sold.

Now, investors, and parties, and institutions holding in trust, prefer much any reasonable reduction of the rate of interest their investments will produce, to a reduction of the principal.

For the past four years they have been receiving lower rates of interest and smaller dividends on their investments than they had been accustomed to. Many of them, judging by the large subscriptions to government four
62 per cents. recently, have come apparently to the conclusion that lower rates of interest than formerly prevailed will hereafter permanently prevail. This is the mood in which they now appear to me to be, and it has suggested the idea that advantage might possibly be taken of so favorable a time and circumstances by the friends of Tennessee to bring about a compromise of the rate of interest on her debt which would enable her with ease to pay it all off.

I will not discuss her ability to pay her debt, but will
63 assume it and pass on to my suggestion, which is as follows:

The State to issue new bonds for the principal and past due interest of her existing bonds, to bear interest at 4 (four) per cent. per annum, payable semi-annually, January 1 and July 1, in each year, coupons to be attached to the bonds representing each payment of interest, to be receivable by the State for all taxes and dues to the State and to be free from taxation of any kind in the State. The bonds themselves to be payable fifty or one hundred
64 years hence, and redeemable by the State at any time after six months' notice that the State is prepared to pay them.

The bondholders of Tennessee may object to making such a proposition of compromise; but if I get from you and the Governor encouragement that, if such a proposition were made by the holders of more than half the debt, it would be accepted, I will exert myself, with Mr

George Smith and other well known large holders, to 65
make it.

Firmly convinced as I am that a settlement in full, if by any possibility it can be accomplished, will be of immense present and future advantage to Tennessee and Tennesseeans, I hope that you will induce Governor Porter and the other friends of State credit to give my suggestion careful consideration.

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, and will, if necessary, go to Nashville for the purpose of 66
an interview with the Governor and yourself.

If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can still be restored and her honest pride saved.

Let me hear from you on receipt, and write further afterward.

Truly yours,

P. GEDDES.

67

Exhibit No. 5.—J. L. G.

NEW YORK, Aug. 29, 1877.

HON. JAMES L. GAINES,

Nashville, Tenn.:

My Dear Sir.—I thank you for your favor of 25th current, and for the information and suggestion therein communicated.

Seeing by the morning papers that the Governors were to meet yesterday at the Continental Hotel, Philadelphia, 68
I telegraphed to Governor Porter there, asking him where a letter would reach him to-day, and after hearing from him wrote him with a copy of my last letter to you, asking him to let me have the benefit of his views thereon in advance of his arrival here, and saying that if agreeable to him I would with pleasure call upon him when he comes to New York.

1026

69 In case Tennessee wants to pay off her debt, it will be of great advantage to her to arrange for a low rate of interest on it. Bonds bearing a low rate of interest can be with greater ease, or at lower cost, bought for a sinking fund than can bonds bearing full rates.

This is a point I had in view when we made our proposition of compromise, and one which I hope will have some weight yet with you.

Yours truly,

70 P. GEDDES.

71

72

United States Circuit Court,

MIDDLE DISTRICT OF TENNESSEE. 1

In Equity.

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee, issued to the LOUISVILLE AND NASHVILLE RAILROAD COMPANY, 2

vs.

THE LOUISVILLE AND NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

3

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds issued to the CENTRAL SOUTHERN RAILROAD COMPANY,

vs.

THE NASHVILLE AND DECATUR RAILROAD COMPANY, *et al.* 4

5 CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee, issued to the TENNESSEE AND ALABAMA RAILROAD COMPANY,

vs.

6 NASHVILLE AND DECATUR RAILROAD COMPANY, *et al.*

7 CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee issued to the MEMPHIS AND OHIO RAILROAD COMPANY,

vs.

THE LOUISVILLE AND NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

8

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee issued to the MEMPHIS, CLARKSVILLE AND LOUISVILLE RAILROAD COMPANY,

vs.

THE MEMPHIS, CLARKSVILLE AND LOUISVILLE RAILROAD COMPANY, AND THE LOUISVILLE, NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

It is stipulated by and between the parties to the aboved-named suits, in order to avoid the trouble, expense and delay of formal proof, that the following are facts proven in these causes:

First.—In reference to the bonds of the State of Tennessee loaned to the railroad companies involved in these causes and their predecessors in interest under the Internal Improvement Laws of the State of Tennessee, as a general proposition, subject probably to some exceptions, the purchasers of said bonds did not know when they purchased the same originally to what companies they had been issued. The information contained in receipts taken by the Secretary of State from the companies as to the bonds loaned before the late war was never made known except as it may be claimed to have been made known by said receipts and by the report of a joint select Committee of the Legislature of Tennessee, appointed by the General Assembly of 1857-8 to investigate the offices

13 of Comptroller and Secretary of State and other purposes, made August 11, 1858, and by a report made by John C. Burch, Comptroller, in 1875. The information relative to the bonds loaned after the war was not made public except as it may be claimed to have been made public by the receipts themselves until a report was made by G. W. Blackburn, Comptroller of Tennessee, in October, 1869.

The bonds were principally negotiated or transferred either in Tennessee or New York. They were either
14 payable to bearer, using those words, or to blank or order, leaving the blank unfilled, or, if filled, it was done with some name other than the companies to whom they were loaned.

Answer No. 2,462, pp. 3 and 4.

Second.—The name of the Railroad Company to which the bonds of the State of Tennessee were loaned under said law does not in any way appear either in or
15 upon the bond.

Ans. No. 2,462, p. 4.

Nor the name of the Railroad Company to which the bonds of the State of Tennessee were issued under other laws passed by the Legislature at the session of 1852, including those issued under the Act of January 15, 1852, does not appear in any way either in or upon the bond.

16 *Third.*—That up to the passage of the Internal Improvement Law of February 11, 1852, the State of Tennessee had never defaulted upon the interest of her public debt, and the straight six per cent. bonds of the State were quoted on the New York Stock Exchange as follows:

Quotations of sales of Tennessee State bonds, taken from the official reports of the New York Stock

Exchange, as published in the New York *Journal of Commerce*, during the year 1852: 17

Date of Report.	*Amt. of Sale.*	*Price.*
1852, February 24,	1,000 6's,	102.
" April 9,	7,000 6's '90,	105.
" May 31,	2,000 5's,	92.
" June 17,	2,000 6's,	110.
" July 19,	2,000 5's,	92.
" December 9,	5,000 6's '68,	106.

18

Fourth.—The report of J. G. M. Ramsay, Agent of the State of Tennessee for the sale of bonds issued to the East Tennesse and Georgia Railroad, made to the Governor of the State, dated September 20, 1851, may be read by complainant on his behalf without objection to its competency. Respondents reserve the right to introduce any proofs they may obtain in rebuttal of the facts stated in that report.

Fifth.—The Tennessee and Alabama Railroad Company received from the State three hundred bonds in July and September, 1854. The English merchants who sold them their iron failed to deliver it according to contract, and the company refused to pay them, but they reserved one hundred and forty-three of the bonds until the dispute could be settled, and they continued in the company's possession until after August, 1855. On the 30th of June, 1859, said company had on hand 389 State bonds, 301 of which were issued as early as June 4th, 1858. On June 30th, 1860, said company had on 20 hand 303 State bonds, 201 of which had been issued as early as June 4th, 1858. Many other instances of a similar kind could be given where the various railroad companies preferred to use their other means in ironing and equipping the first part of their roads, reserving their State bonds for ironing and equipping other parts of their roads. The companies cut the coupons from these bonds, and with them paid the interest on

19

these bonds into the Bank of Tennessee, as they did the interest on those bonds that had been negotiated.

Ans. No. 2,462, pp 8 and 9.

In 1852 the taxable property of Tennessee was $177,420,305. The debt of the State then amounted to only $3,992,856.66, and the rate of State tax was only 11½ cents on the hundred dollars. After the loan of bonds to railroads there was no difference in the money market between prices of the bonds loaned to railroads and those issued by the State to raise the capital of the Bank of Tennessee, or to build her State house; nor was there any difference in price between the bonds loaned to the most valuable railroads and those loaned to the most worthless, except that in both of the above cases a difference of from two to five per cent. on limited transactions has arisen within the last two years, in the open market in New York, but no difference has ever existed on the Stock Exchange of New York, owing to the way in which Tennessee bonds are called at said Exchange.

Respondents have caused thorough investigation to be made in each of their offices, and have been unable to find any evidence that there was any record made and kept by them of the numbers, dates, or series of the bonds issued to them, and have no knowledge, information, remembrance or belief in regard thereto (p. 12). The proceeds of these bonds were applied as directed by the laws under which they were loaned to railroads (p. 13).

The Comptroller's reports show that the Sinking Fund Commissioners credited each railroad company with the annual amounts paid in, but in their investment thereof selected any bonds of the State that were offered for sale. Thus, from the Comptroller's report of 1859 (page 59), it seems that the Tennessee and Alabama Railroad Company paid to the Treasurer $6,400, which was invested in one bond endorsed by the State for the East Tennessee and Georgia Railroad

Company, four State 5¼ per cent. bonds, and three State five per cent. bonds. Not one of the bonds purchased with the money paid in by that company had ever been issued to it. The idea of the State at that time was to pay the interest on all the bonds that were paid into the Railroad Sinking Fund, and that the accumulation would be so rapid as to certainly raise a fund that would pay the bonds by their maturity.

In the Comptroller's report of 1859 (p. 16), he states that $82,840.95 paid in by the railroad therein named, invested with accrued interest, had purchased bonds amounting to $109,750, which paid an annual interest of $6,417.50, or 7¾ per cent. on the investment.

The State had loaned her own bonds to some of her Internal Improvement Companies; she had endorsed the bonds of some of the other companies, and has issued her own bonds to pay for her State House, and for other purposes. The result was that she had several different series of bonds issued under different laws and maturing at different times. Series A were five per cent. bonds issued under Act of 1838, maturing in thirty years. They were issued principally to pay for stock subscribed by the State in various turnpikes and railroads, and aggregated $1,893,000. Series B were known as "White bonds, six per cent., issued under the Act of February 11th, 1852." Numbers 1 to 7,908 of this series mature in 1892, while numbers 7,909 to 11,806 do not mature until 1898. This series aggregated $11,806,000. Series C were also known as "White bonds, six per cent., issued under the Act of February 11th, 1852," and due in 1898. This series aggregated $1,878,000. Series B and C represented the State Bonds loaned to the various railroads under the said Act of February 11th, 1852, before the war. Under the Act of March 20th, 1860, to illustrate, the East Tennessee & Virginia Railroad Company paid in fifteen of their own endorsed bonds, and two regular State bonds; the Memphis & Charleston Railroad Company paid in sixteen State bonds, and

29 $2,960 in cash; the Memphis & Ohio Railroad Company paid in six State bonds; and so have the McMinnville & Manchester Railroad, and the Tennessee & Alabama Railroad.

Though the various Acts of the Legislature and the reports of the Comptroller and of the Sinking Fund Commissioners, referred to in the answers, were all public, no bondholder was ever heard to protest against the authority assumed by the State, or against the cancellation and destruction of the securities which the
30 companies had paid into the Sinking Fund. An opinion, however, of Judges Davis and Davies was obtained, addressed to J. J. Donaldson, Chairman of Committee of bondholders, dated May 2, 1870, which is made Exhibit X to this stipulation. No bondholders ever presented a State coupon to any railroad company for payment. No Tennessee railroad company had any banker or other correspondent in New York to pay the coupons on the State bonds loaned to it. No company ever retained in its possession the coupons that had
31 been paid on the bonds loaned to it.

As long as the Bank of Tennessee was in operation it was regarded as the fiscal agent of the State. All of its directors were appointed by the State. They were required to report to the State, and were constantly kept under its control. The State Treasurer kept none of the State funds in his own hands, but deposited all the revenues of the State in the Bank of Tennessee, and could only check for the same on checks countersigned by the Comptroller. The Bank of Tennessee
32 paid the interest on all the State bonds, without reference to the purpose for which they were issued. This is shown by the report of the Comptroller to the Session of 1851–2, when the general Internal Improvement Law was passed. (See his report, page 65.) The Merchants' Bank of New York and the Bank of North America of Philadelphia, were the correspondents through whom the Bank of Tennessee paid the interest

on the State debt. These correspondents would return 33
the coupons to the Bank of Tennessee, by whom they were returned to the State. There was one account on the books of the Bank of Tennessee headed "Treasurer of Tennessee," which was credited by the revenues of the State deposited by the Treasurer, and by the dividends derived from the State's stock in the bank, and the various internal improvement companies in which the State was a stockholder, and was debited by the interest on the entire State debt paid by the Bank of Tennessee, and by such other sums as were 34
drawn by the Treasurer under appropriations made by law. There was also an account on the books of the Bank of Tennessee headed "Interest paid on State Bonds," the object of which was to show the exact amount paid on that account, but it shows nothing as to whom, or for what purpose the bonds were issued upon which such interest was paid. There was also an account headed "Railroad Companies, for Interest," showing the amounts and dates of all payments into the bank by the different companies, but it does not 35
show that the payments were to be appropriated to the interests upon any particular bonds of the State; nor did the bank, in fact, know what bonds had been issued to any named railroad.

The funds paid in by all the railroads were transferred either to the Treasurer's general account or to the account headed "Interest on State Bonds."

The Bank of Tennessee kept entries in its books showing the amount which each railroad company paid in for account of its interest. It is stipulated that ex- 36
tracts from the books of the bank may be read by either party. The moneys paid in by the railroads were sent by the Bank of Tennessee, with other funds to New York and Philadelphia, where they were paid out by the correspondents aforesaid upon coupons of the State, making no distinction between the different bonds of the State.

These correspondents kept no accounts with the rail-

road companies, and did not know to whom the bonds were issued, the coupons of which they were paying.

The Merchants' Bank of New York City was the correspondent in New York, through whom the Bank of Tennessee paid nearly all the interest-coupons payable at New York on the bonds of the State of Tennessee, issued for all purposes, and this agency continued from 1852, through the years 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, and to April, 1861.

The ledgers of the Merchants' Bank of New York and the books in which they took the receipts of coupon-holders and the detailed statements of paid coupons forwarded regularly every six months by the Merchants' Bank to the Bank of Tennessee, show that as to all the bonds issued under the Act of 1851–2, Chap. 151, or Acts amendatory thereof, the Merchants' Bank did not keep, nor attempt to keep, an account showing the Railroad Company to whom the bonds were issued, the coupons on which were paid, nor did they attempt to classify or identify the coupons, when paid, as being coupons from bonds issued to any particular Railroad Company.

The only accounts shown on the books of the Merchants' Bank for said years with the Bank of Tennessee were two: first, the general reciprocal account, on one side of which appeared the gross sums of money to the credit of the Bank of Tennessee, and on the other its checks and drafts; secondly, an interest or coupon account, showing the amount of coupons paid, and this account was credited with and balanced by checks drawn by the Bank of Tennessee upon its regular account and balance in the Merchants' Bank at the time, without any discrimination as to the coupons to which the payments were applied.

This admission is made alone to save the expense and trouble of making copies of the entries from said books of the Merchants' Bank, and states truly the facts as they actually appear on said books.

When the State of Tennessee was in default in the

payment of interest on any of its bonds it was in default 41
on all of them then matured, except such as were held by the East Tennessee University and the Commissioners of the Common School Fund, which were provided for by special legislation.

Each coupon could be identified when detached from its bond as having been separated from their respective bonds, which identification existed by means of the color, letter and number of the instruments.

In the Treasurer's books an account was headed "Bank of Tennessee," the reverse of the account kept 42
under his name at the said bank. There is also an account headed "Interest on Capitol Bonds," in which is shown the interest paid on the bonds issued to pay for the State House.

There is also an account headed "Interest on Internal Improvement Bonds." It shows the gross amount paid out on such bonds, but it does not show by whom the money was furnished, nor does it show the number or character of the bonds on which the interest was paid. There are no separate accounts with the different rail- 43
roads to be found on the Treasurer's books. With the exception of the distinction between Capitol and Internal Improvement bonds, the Treasurer made no difference between the various bonds of the State, but treated all as equally the obligations of the State.

The interest on the bonds loaned to respondents was not paid after July 1, 1861, except as hereinafter stated. And though the United States Circuit Court was open in Nashville, after its capture by the United States army in February, 1862, no bondholder ever claimed 44
the right to a receiver for non-payment of interest.

The copies of the resolution and report attached as Exhibits A and B, to the answer of the L. & N. R. R. Co. No. 2,462 are admitted to be correct copies. They were published in the acts and journals of that session.

The bonds and coupons were paid by the L. & N. R. R. Co. as therein stated. The bonds cost 68 4-10 cents

45 per dollar, which includes per cent. of overdue coupons. The bonds paid to the State by the Memphis & Ohio Railroad Company cost 63 9-10 cents on the dollar. The bonds with which the Memphis, Clarksville & Louisville Railroad was bought, cost 63 7-10 cents on the dollar. The above prices include per cent. of overdue coupons which price includes the overdue coupons. And no one ever controverted the right of the State to make a settlement until this bill was filed, except so far as the opinion addressed by Judges
46 Davies and Davis to J. J. Donaldson as Chairman of the Committee of Tennessee bondholders circulated in pamphlet in New York City and some in Europe in 1870, may be so considered.

The Louisville & Nashville Railroad Company on April 8th, 1868, executed a mortgage or trust deed duly registered, upon its main stem and branches, to James Punnett and Junius B. Alexander, citizens of the State of New York, to secure an issue of eight millions of dollars of bonds of which $7,070,000 were sold in Europe
47 and are now outstanding in the hands of European holders for value, who had not received any notice of the existence of any claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851-2, and their amendments, and the fact that the said opinion of Judges Davies and Davis addressed to J. J. Donaldson as Chairman of the Committee of bondholders was circulated as aforesaid.

The said Punnett has since died, and John B. Smith, a citizen of Louisville, Kentucky, has been substituted
48 as trustee. On November 1st, 1873, said company executed another mortgage or trust deed, duly registered, conveying the same property and also the Memphis & Ohio and the Memphis, Clarksville & Louisville Railroads to Henry F. Vail, a citizen of the State of New York, and John B. Smith, a citizen of Louisville, of Kentucky, to secure an issue of four million dollars of bonds, of which two million are now outstanding in the hands of holders for value, who had not received any

notice of the existence of any claim to a statutory lien 49
on the roads, except such as may be implied from the Tennessee laws of 1851-2, and their amendments, and the fact that the said opinions of Judges Davies and Davis addressed to J.J. Donaldson, as Chairman of the Committee of bondholder was circulated as aforesaid. In March, 1865, the bonds of the State of Tennessee were of the market value of fifty cents, but in December, 1865, they were at 92 cents in the dollar, as stated by the Financial Review of New York. The Nashville & Decatur Railroad Company, created by the consolida- 50
tion of the Tennessee & Alabama Railroad Company and the Central Southern Railroad Company, in March, 1871, paid to the State of Tennessee $2,368,176 in bonds and coupons of the State. Said company had raised the money to buy the bonds and coupons paid in by them, by mortgaging the road for $2,100,000, in 1870, and selling the company's bonds in the New York market. None of the State bondholders attempted by any legal proceedings to assert any rights in opposition to the course which that company was pursuing except 51
so far as obtaining the opinion of counsel above referred to. And the Louisville & Nashville Railroad Company leased said Nashville & Decatur Railroad in May, 1871, agreeing to pay $2,450,000, of the debts of said company, and an annual six per cent. dividend upon its capital stock of $1.512,184.11, and in addition to all this, the Louisville & Nashville Railroad Company have spent $ over and above their receipts in the repair and operation of said road.

On May 25th, 1871, the Memphis & Ohio Railroad 52
Company paid the State of Tennessee $2,468,376.50 in bonds and coupons of the State. On the first of June, 1871, said Memphis & Ohio Railroad Company mortgaged its road for $3,500,000 of bonds, which were originally sold and are still held in Europe by holders, who had not received any notice of the existence of any claim to a statutory lien on the roads except such as may be implied from the laws of Tennessee of 1851-2, and their

53 amendments, and the said opinion of Judges Davies and Davis addressed to J. J. Donaldson as chairman of the Committee of Bondholders, circulated as aforesaid. No State bondholder having made any complaint to Court or addressed to them, the Louisville & Nashville Railroad Company consolidated with said Memphis & Ohio Railroad Company, endorsed said $3,500,000 of bonds, and have since expended $ over and above their receipts in the repair and operation of said road.

54 In January, 1871, the State of Tennessee filed its bills in the Chancery Court at Nashville, Tennessee, against the Memphis, Clarksville & Louisville Railroad Company, to whom State bonds had been loaned, upon which such proceedings were had as will appear by a certified transcript of the record to be filed in these cases. The State bondholders have never sought to review or to reverse said decree.

On August 1st, 1872, the Louisville & Nashville Railroad Company placed a mortgage on said last-named
55 road for $2,465,000 of bonds which the Louisville & Nashville Railroad Company endorsed, and which were originally sold in Europe in 1872, and are still held there by holders for value, who had not received any notice of the existence of any claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851–2, and their amendments, and the said opinions of Judges Davies and Davis addressed to J. J. Donaldson as Chairman of the Committee of Bondholders, circulated as aforesaid. Said Louisville and
56 Nashville Railroad Company have also expended $ over and above their receipts in the repair and construction of said road.

With the exception of some interest paid in 1867–8, and some paid in 1874–5, the State of Tennessee has paid no interest since the commencement of the late war, and the remainder of the interest has all been funded into new bonds of the State, except that which matured since January 1st, 1876, and it has neither

been funded not paid. The Act of 23d November, 57
1865 (see Public Acts, 1865-6, pp. 11 and 12) was carried into execution as to all the railroads in this litigation.

All, or nearly all, of the past due coupons referred to in said Act were funded by the present bondholders or those under whom they claim. The coupons were delivered to the State, pasted in books kept in the comptroller's office, and new bonds received from the State for the old coupons. A new bond might have been for coupons on bonds loaned to several different railroad companies or on bonds not loaned to any railroad com- 58
pany, and so of the practice under the funding Act of 1873.

The Nashville and Decatur Railroad Company and the original companies forming the consolidation had received State bonds, which, with interest and sinking fund, amounted to $2,368,176. They met ther interest in January, 1869, but fell behind $15,955.26 on their interest for July, 1869.

This authorized the State to appoint a receiver; and experience on other roads had taught that in every in- 59
stance these State receivers had run the roads down, without ever reducing the indebtedness.

In October, 1869, the debt of Tennessee was $37,590,-027.08, of which about $30,000,000 were for bonds loaned to railroad companies, with funded interest thereon. The State's bonds ranged in New York in 1869 from 70 cents in January to 40½ cents on the dollar in December, there being no distinction between bonds loaned to railroads and any other bonds.

On July 1, 1870, the Nashville and Decatur Railroad 60
Company excuted a mortgage or trust deed upon their railroad property, rights and franchises, conveying the same to Philo C. Calhoun, Richard T. Wilson, and Adrian Iselin, all citizens of the State of New York, to secure first mortgage bonds to the amount of $2,100,000 issued and negotiated to raise the money to buy the State bonds to pay the debt due from said company. Said mortgage was duly executed and registered. The

61 bonds are now outstanding in the hands of persons who for most part are citizens of states or countries other than Tennessee, holders for value, who had not received any notice of the existence of any claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851-2, and their amendments, and the said opinion of Judges Davies and Davis addressed to J. J. Donaldson as chairman of the Committee of Bondholders, circulated as aforesaid.

62

The following is a copy of one of said bonds:

[*Form of Bond.*]

No.. UNITED STATES OF AMERICA. $1,000.

63 STATES OF TENNESSEE AND ALABAMA.

THE NASHVILLE AND DECATUR RAILROAD COMPANY.

7 per cent. First Mortgage Sinking Fund Bond.

The NASHVILLE AND DECATUR RAILROAD COMPANY promise to pay to the holder of this Bond, on the first day of July, one thousand nine hundred, for value received, the sum of *one thousand dollars*, in lawful money of the
64 United States, in the City of New York, with interest in the meantime at the rate of *seven per cent.* per annum, payable semi-annually on the first day of January and July of each year on delivery of the annexed interest warrant.

U. S. Int. Rev. Stamp. $1.05.

This bond, with others of like tenor and date, amounting in the aggregate to a sum not exceeding two million one hun-

ONE THOUSAND DOLLARS.

dred thousand dollars, is secured by a first mortgage on the railroad and franchises of said company made by Philo C. Calhoun, Richard T. Wilson, and Adrian Iselin, and is entitled to the benefit of a sinking fund, as set forth in the deed of trust. 65

This Bond shall pass by delivery or by transfer on the books of the company. After a registration of ownership, certified hereon by the Transfer agent of the Company, no transfer except on the books of the company shall be valid unless the last transfer be to bearer. 66

SECURED BY FIRST MORTGAGE.

In Witness Whereof, the said Nashville and Decatur Railroad Company has caused this bond to be signed by its President and Secretary, and its corporate seal to be hereunto affixed, at the City of Nashville, Tennesse, on the first day of July, Anno Domino one thousand eight hundred and seventy. 67

J. W. SLOSS
President.

[SEAL.] G. W. SEAY,
Secretary.

I certify that the Nashville and Decatur Railroad Company has paid off the debt to the State of Tennessee, which was created by the loans of the bonds of said State, and for interest thereon, and that this bond is secured by a first mortgage, and is issued under authority of law, and takes the place of the lien which was held by the State. 68

ED. R. PENNEBAKER,
Comptroller of the State of Tennessee.

By P. C. CALHOUN,
Prest. Agent.

69 [*Form of Coupon.*]

THE NASHVILLE AND DECATUR

$35 Railroad Company $35

will pay the bearer in the City of New York Thirty-five dollars in lawful money of the United States, on the first day of.... 18.. for semi-annual interest on bond No....

G. W. SEAY,
Secretary.

[*Trustees Certificate.*]

70 We certify that this bond is one of a series not exceeding two million one hundred thousand dollars, described in and secured by the deed of trust or mortgage mentioned herein, bearing date first day of July, Anno Domini one thousand eight hundred and seventy, which is duly recorded.

P. C. CALHOUN,
R. T. WILSON,
ADRIAN ISELIN, } *Trustees.*

71

The State Comptroller in his report in 1869, page 50, suggested to the Legislature the propriety of selling a sufficient number of the railroads for bonds of the State, to lessen the State's liabilities eight or ten mil-
72 lions of dollars, he believing with such reduction the State's liabilities could be regularly and certainly met. His report in 1867 (page 67) shows that the railroads then owed $800,000 for interest due July 1st, 1867, which the State had paid on the bonds loaned them.

The Comptroller in his report for 1867 states that the records of his office show that from the railroads then in the hands of Receivers scarcely a dollar had been received during the past fiscal year (page 13). If the

State had forced a sale of all the delinquent railroads 73
so large an amount of such property thrown upon the
market, in the depressed financial condition of the
country, would have sacrificed alike the interest of the
companies and the State, but by allowing the com-
panies to pay their debts in any of the bonds of the
State, and giving them a reasonable time in which to
get the bonds, they were enabled to procure them at
reasonable rates, and by reducing the aggregate debt
of the State, they increased the ability of the State to
pay, and the bonds of the State which were quoted as 74
low as 40½ in December, 1869, were quoted as high as
91¼ cents on the dollar in March, 1874, at the New
York Stock Exchange.

An elaborate opinion was written at the instance of the Nashville and Decatur Railroad Company, by Colonel Pryor, which was concurred in by the Hon. E. H. East, of Nashville, who was then and is now one of the most eminent lawyers of Tennessee. The object of asking the opinion was not to satisfy said company, but to place the question fairly before the money 75
markets of the world, where said company was trying to raise the means to buy the bonds to deliver to the State as they claimed in payment of their debt to the State. The respondents knew nothing of any opinion of New York counsel to the same effect that was published at or about that time. It is true that the transaction in all its entirety was fully understood by the N. & D. R. R. Co., and they supposed it was also understood by the purchasers of their new bonds, as the legislation under which they were issued was referred 76
to in the mortgage, and the opinion of Colonel Pryor was published to give information on the subject. Said company acted upon the advice of counsel, and in confidence that said advice was correct.

It is stipulated that the amount of bonds received from the State of Tennessee, the dates of default stated in the pleadings, are true.

It is admitted that there had been issued to the Mem-

77 phis and Ohio Railroad Company State Bonds which, with interest and sinking fund, amounted in year to $2,396,110. They met their interest in January, 1867, but failed to pay their interest for July, 1867. The Governor, however, felt bound to comply with the law and appointed a Receiver to take charge of the road; said Company were also heavily indebted for labor, materials and supplies. The earnings were insufficient to pay operating expenses, and additional means were needed to put the road in a safe condition.

78 The Louisville and Nashville Railroad Company being greatly interested in the efficient operation of said road as a part of the Louisville and Memphis line, had already advanced to said Memphis and Ohio Railroad Company $125,000, and then agreed to lease their road, to pay the interest on the State Bonds to the State of Tennessee, and to pay the debts of said Company incurred since the war in the reconstruction and operation of the road. They were to reimburse themselves, if possible, from the earnings of the road, but if there

79 should be a surplus of earnings, it was to be paid over to the Memphis and Ohio Railroad Company (p. 33).

The Louisville and Nashville Railroad Company paid the interest upon the bonds loaned to said last-named road. Said payments were made regularly each six months from July, 1867, to July, 1871. Each semi-annual payment amounted to $71,883.30, and they were made mostly in cash, though some were made in past-due bonds and coupons of the State. During most of this time the State was in default upon the interest due

80 on the bonds loaned to the Memphis and Ohio Railroad Company, and was using for other purposes the money which the Louisville and Nashville Railroad Company were paying to enable her to meet interest on said bonds.

On the 25th of May, 1871, the Memphis and Ohio Railroad Company paid the State of Tennessee $2,468,376.60, in bonds and coupons of the State, as the Company claimed in full of all claims and de-

mands of said State against said Company, and in full discharge and satisfaction of all liens upon the property, rights, franchises and privileges of said Company originating in, or created by, the loan or issuance and delivery to said Company of the bonds of said State under or by virtue of the Act of the Legislature of said State, passed the 11th day of February, 1852, entitled, "An Act to create a system of internal improvements in this State," and under the Acts amending the same, or any other Acts of said Legislature. 81

The Comptroller of said State executed and delivered to said Company a receipt evidencing said payment, and a copy of said receipt is hereto filed, marked Exhibit C., to the Mem. & O Answer. 82

On June 1, 1871, said Memphis & Ohio Railroad Company executed a mortgage or trust deed upon their railroad property, rights and franchises conveying the same to Junius B. Alexander, a citizen of New York, and John B. Smith, a citizen of Kentucky, to secure $3,500,000 of claiming or purporting to be first mortgage bonds, Said mortgage was duly executed and registered, and the bonds originally negotiated in Europe in 1871, are now outstanding in the hands of holders there for value, who had not received any notice of the existence of any claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851 2, and their amendments, and the circulation as aforesaid of the said opinion of Judges Davies and Davis, and addressed to J. J. Donaldson, as Chairman of Committee of bondholders. 83

After the Memphis and Ohio Railroad Company had delivered the bonds to the State as aforesaid, and had mortgaged their road, the Louisville & Nashville Railroad Company endorsed $3,500,000 of bonds secured by said mortgage, and on October 9, 1872, entered into formal articles consolidating the two companies as stated above, the consolidation becoming bound for all the debts of the Memphis & Ohio Railroad. The articles of consolidation were duly registered in Octo- 84

85 ber, 1872, in all the counties in Tennessee through which the Memphis & Ohio Railroad ran.

On November 1, 1873, the Louisville & Nashville R. R. Co. executed a mortgage on their main stem and branches, including the Memphis & Ohio Railroad, conveying the same to Henry F. Vail, a citizen of New York, and John B. Smith, a citizen of Kentucky, to secure $4,000,000 of bonds, $2,000,000 of which are now outstanding in the hands of *bona fide* holders for value, who had not received any notice of the existence of any
86 claim to a statutory lien on the road, except such as may be implied from the Tennessee laws of 1851-2, and their amendments, and the circulation as aforesaid of the said opinion of Judges Davies and Davis addressed to J. J. Donaldson, as Chairman of the Committee of bondholders. Said mortgage was duly registered (p. 37.)

With reference to the answer in the Memphis, Clarksville and Louisville R. R. Co., The M. C. & L. R. R. Co. having defaulted on its interest, the Governor
87 placed it in the hands of a Receiver as early as July 1st, 1865, and though it was continued under State Receivers until it was sold "it never paid one cent into the treasury on any account whatever."

The easterly span of the Cumberland river bridge, and the whole of the bridge over the Tennessee River had been destroyed during the war, some of the trestling had been swept away, some of it had been thrown out of position, and all of it that was standing needed extensive repairs. One of the most frightful railway
88 accidents of modern times occurred on this road in consequence of a passenger train running through the Budds creek trestle. The dirt embankments had been badly washed, and the cuts filled up with mud, in some instances ten feet deep. Many parts of the road were overgrown with grass, weeds and briars. The farmers along the road, being in need of iron during the war, had taken rods, bolts, spikes and chairs for blacksmithing purposes, and had even cut the bridges

and trestles to get the iron. Switch circles, targets 89
and connecting rods were taken off and used for the
same purpose.

This railroad is about eighty-two miles long. The
termini are both small villages of no commercial im-
portance, and the country traversed is poor and sparsely
settled. The road crosses three large rivers, and nu-
merous small streams requiring many bridges and
trestles. The cost of construction and maintenance of
way is enormous, while the local business of the road
is almost nothing. To have kept such a road in opera- 90
tion through a receiver until the State bonds loaned to
it matured would have cost the State millions of dol-
lars. To have allowed it to remain unused would have
been equivalent to abandoning it to waste and destruc-
tion, and as to the company keeping it up, they were
utterly insolvent, and as early as March 28, 1867, initial
proceedings to go into voluntary bankruptcy, for which
purpose they afterwards filed a petition in the United
States District Court at Nashville.

It is agreed that the bill of the Memphis, Clarksville 91
and Louisville Railroads against the Commissioners for
the sale of delinquent railroads and the action thereon
may be read.

After their purchase of the Memphis, Clarksville and
Louisville R. R. Co., the Louisville and Nashville Rail-
road Company executed a mortgage upon said Mem-
phis, Clarksville and Louisville Railroad Company,
conveying it to Junius B. Alexander, a citizen of New
York, and John B. Smith, a citizen of Kentucky, to se-
cure $2,465,200 of bonds, which were endorsed by the 92
Louisville and Nashville Railroad Company and nego-
tiated in Europe in 1872, where they are now outstand-
ing in the hands of purchasers for value. Said mort-
gage was executed August 1, 1872, and shortly there-
after was duly registered in all the counties through
which said road runs. The purchasers of said bonds
had not received any notice of the existence of any
claim to a statutory lien on the roads except such as

93 may be implied from the Tennessee laws of 1851--2,and their amendments, and the circulation as aforesaid of the said opinions of Judges Davies and Davis, and addressed to J. J. Donaldson as Chairman of the Committee of Bondholders

Afterwards, on November 1, 1873, the Louisville and Nashville Railroad Company executed a mortgage on their main stem and branches, including said Memphis, Clarksville and Louisville Railroad to secure $4,000,000 of bonds, $2,000,000 of which are now outstanding in
94 the hands of purchasers for value who have not received any notice of the existence of any claim to a statutory lien on the roads except such as may be implied from the Tennessee laws of 1851--2, and their amendments,and the circulation as aforesaid of the said opinion of Judges Davies and Davis addressed to J. J. Donaldson as Chairman of the Committee of Bondholders. Said mortgage conveyed said property in trust to Henry F. Vail, a citizen of New York, and John B. Smith, a citizen of Kentucky,and was, shortly
95 after its execution, duly registered in all the counties through which said Memphis, Clarksville and Louisville Railroad runs. Said road lies entirely within the State of Tennessee.

It is admitted that the complainant received several years ago from his father, who had been an owner of Tennessee bonds for many years, an amount between one and two hundred thousand dollars of said Tennessee bonds ; he also became an owner of such bonds by individual purchases made on his own account
96 about eight years ago. The aforesaid bonds cost his father and himself more than eighty cents on the dollar; and that in addition thereto for sometime prior to the filing of these bills, he was engaged in the New York market in selecting Tennessee State bonds loaned to the Central Southern and the other companies involved in these suits, and has been buying Tennessee bonds on the market at heavy rates of discount, at less than fifty per cent. of their par value ; that he has been exchanging Tennessee bonds

which had not been loaned to railroads for bonds issued 97
to respondents, paying one or two per cent. for the exchange.

That at the time he was making these transactions he knew that the defendant railroad companies claimed that they had paid their entire debts on account of Tennesssee bonds, and denied all liability either to the State or to the bondholders for bonds, but complainant relied upon what he thought were the rights conferred upon holders of such bonds by the Internal Improvement Act of February 11, 1852, and its amendments, 98
and did not believe that it was in the power of the State and the railroad companies to discharge the lien which he believed was created by those acts except by actual payments to the holders.

Some of the bonds sued on in these suits were received from complainant's (Stevens) father; some were purchased about eight years ago by him, some were recently acquired by him by purchase or exchange, as stated above. That James L. Gaines has been Comptroller of the State of Tennessee since January, 1875. 99

It is further stipulated that all statutes, public documents and records of the State of Tennessee may be read as evidence by either party on the hearing of the causes, subject to exception for irrelevancy. They may be so read, as may also the public statutes of New York, from the usual official publications without any more formal proof, except that either party may introduce certified copies of the original documents where any difference appears between the published volumes and such originals. Other facts not embraced in this stipu- 100
lation and deemed material by either party may be subject of proof in the usual mode.

It is further agreed that all five of the above cases may be heard at the same time and place before the same Court.

E. L. ANDREWS,
Solicitor for Complainants.

ED. BAXTER,
Solicitor for Respondents.

August 14, 1879.

IN THE

CIRCUIT COURT OF THE UNITED STATES,

FOR THE MIDDLE DISTRICT OF TENNESSEE.

Calvin Amory Stevens, who sues for himself and other holders of the Bonds of the State of Tennessee issued to the Louisville and Nashville Railroad Company,

1 *vs.*

The Louisville and Nashville Railroad Company and John B. Smith.

Same, upon Bonds issued to the Tennessee and Alabama Railroad Company,

2 *vs.*

The Nashville and Decatur Railroad Company, Charles Diggelman, and others.

Same, upon Bonds issued to the Central Southern Railroad Company,

3 *vs.*

Same defendants.

IN THE CIRCUIT COURT FOR THE WESTERN DISTRICT OF TENNESSEE.

Same, upon Bonds issued to the Memphis, Clarksville and Louisville Railroad Company,

4 *vs.*

The Louisville and Nashville Railroad Company and John B. Smith.

Same, upon Bonds issued to the Memphis and Ohio Railroad Company,

vs.

Same defendants.

IN EQUITY.

Agreed Statement of Facts.

It is hereby stipulated and agreed by and between the parties hereto, being parties to the above-entitled suits, in order to avoid the trouble, expense, and delay of formal proof, that the following may be taken and held to be proven as facts in each of said causes, as far as applicable thereto, but subject to all proper objections for incompetency or irrelevancy.

1. The stipulation dated August 14, 1879, signed by E. L. Andrews, solicitor for complainants, and Ed. Baxter, solicitor for respondents, is to be taken as part of this agreement, as fully as if recited and again set forth herein.

2. Either party shall be at liberty to use any or all of the depositions taken in any or all of the cases now pending in the Circuit Courts of the United States for the Eastern, Middle and Western Districts of Tennessee, brought by the said complainant, or by him and others, to enforce the lien reserved by the internal improvement laws of said State against divers railroad companies, so far as the testimony therein contained may be competent and relevant herein. A list or statement of such depositions shall be furnished by the party using the same to the other at the hearing, and printed copies of such depositions shall be filed in any case in which the same may be used.

3. Either party shall be at liberty to file in any of

these causes a copy of the whole or any part of their printed compilation of laws, records, and documents, and either party may read as evidence, without further proof, such parts thereof as they may see fit, subject to all proper objections, on the ground of incompetency or irrelevancy.

4. It is further agreed that the Louisville and Nashville Railroad Company is a body corporate and politic, chartered by the acts of the General Assembly of the Commonwealth of Kentucky. The right of way to construct its railroad from the line between the States of Kentucky and Tennessee to Nashville was granted it by the acts of the General Assembly of Tennessee, but it has never been incorporated by said State, and, therefore, is not a citizen thereof, but of the State of Kentucky; that the object and purpose of the creation of said corporation by the said charter and laws, was the construction, completion, and thereafter the operation and management, among others, of a line of railway for the transportation of passengers and freight, from the City of Louisville, in the State of Kentucky, to the City of Nashville, in the State of Tennessee. For this purpose such powers were granted to said corporations as are declared in the several charters and acts of incorporation of Kentucky, and acts giving it a right of way and to transact business in the State of Tennessee. The said corporation was authorized to borrow money for the purposes of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for and insure the payment of its liabilities.

That all bonds of the State of Tennessee loaned to railroad companies under the act of the General Assembly of the State of Tennessee, passed February 11, 1852, and the acts amendatory and supplementary thereto, including those loaned to the

Louisville and Nashville Railroad Company, were sold in the market as straight Tennessee State bonds, as distinguished from bonds of railroad companies, indorsed or guaranteed by the State; that what were known in the market by the public as straight Tennessee bonds the said, bonds including those loaned to the Louisville and Nashville Railroad Company, sold before the war, at the following prices:

While bonds of other descriptions, on which the railroad companies were bound as principals, and the State of Tennessee as surety, were sold at the following prices:

That the Louisville and Nashville Railroad Company received from the State of Tennessee her six per cent. coupon bonds, at the times and in the amounts following, and none others, and at no other dates, namely:

Rec'd April 30, 1858,	50	bonds	amounting	to	$50,000
" " " "	150	"	"	"	150,000
" " " "	100	"	"	"	100,000
" July 15, 1859,	150	"	"	"	150,000
" April 20, 1861,	5	"	"	"	5,000

Said bonds, to the amount of five hundred and sixty thousand five hundred dollars, were received by or on behalf of the Louisville and Nashville Railroad Company, through properly appointed officers, and were by said company negotiated and sold, in pursuance of law, to *bona fide* holders, but none were received prior to April 30, 1858. The proceeds of these bonds were applied as directed by the laws under which they were loaned to said railroad company; that the State of Tennessee has failed to pay to the holders of its bonds the coupons thereon, representing interest accruing thereon, which became due on the first day of July, 1876, and all falling due since that date, and is in default

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therefor; that, on May 5, 1865, the General Assembly of the State, by joint resolution, appointed the comptroller, secretary of state, attorney-general, and commissioner of public works a board to make a settlement with the Louisville and Nashville Railroad Company, and if a satisfactory settlement could not be obtained, the governor was authorized to have instituted such legal proceedings as might be necessary to protect the interests of the State. On the 18th of November, 1865, said commissioners reported to the legislature that they had effected a settlement; that the bonds loaned said company by the State amounted to $560,500, and the overdue interest thereon to $147,131.25; that the company had proposed to pay the entire principal in straight six per cent. coupon bonds of the State and the interest in coupon bonds of the State then due. The commissioners say: "Believing it to be manifestly for the interest of the State to call in this large installment of its indebtedness, and believing, moreover, that the company had a right under the law regulating the sinking fund to pay off its entire indebtedness in the bonds of the State, your commissioners accepted the proposal, and executed to the company a receipt dated November 17, 1865, for $707,631.25 in bonds and coupons of the State, being the total indebtedness of said company to the State of Tennessee on account of the bonds of the State received in aid of the construction of said road and the bridge across the Cumberland river." True copies of said resolution and report are annexed to the answer filed by John B. Smith in the first of said cases; that the said railroad company actually delivered said bonds and coupons as in said receipt is recited; that at the time this settlement was made in 1865, the State was in default for non-payment of the interest on its bonds from July, 1861; that the bonds and coupons paid by the Louisville and Nash-

ville Railroad Company to the State of Tennessee in the said settlement, were not the identical bonds and coupons originally advanced and loaned to said company and by it negotiated and sold, but that the same, in part at least, were other bonds and coupons of the State of Tennessee; that, at the time said settlement was made, the war had but recently prior thereto definitely closed. During the period of actual military operations, the railroads had been the prize of contending armies, as instruments of offense and defense. In the course of the struggle, they had been stripped of their equipment, and parts of them destroyed and repaired, and, in some cases built and extended, by the United States government, to fit them for military use, but so that when they were finally restored, on or about August, 1865, to their owners, they were destitute of rolling stock, cars, machinery, shops, and tools, and almost every thing needed for an equipment, nearly every thing of that description then in actual use upon the roads being the property of the United States, furnished and employed for its military uses. This they were permitted to purchase and did so in pursuance of executive orders issued by the President of the United States in September and October of that year, but being unable to pay cash, gave their obligations for the purchase-money payable in installments and bearing interest. The roads themselves, their road-beds, tracks, trestle-works, bridges, and permanent works of every description, were, to a greater or less extent, out of repair, in need of restoration, in some instances in a state of actual dilapidation. Business of every kind had been largely suspended by the war, except military transportation, and now that employment ceased with the cessation of hostilities, but the fruits of peace, in the revival of industry and trade, could only come with the lapse of

time, and the gradual accommodation of the community to the new order of things. The general result was that the railroads required large sums of money to put them in a condition to earn an income, and, after that, would have to wait the slow operation of general causes upon the social condition of the people, before any revival of trade would renew their sources of revenue. In the meantime, a large arrearage of debt, for unpaid interest, had accumulated by reason of the default, during the whole period from July, 1861, both of the State and railroad companies, in consequence of which the State scurities had become discredited in the markets of the world.

It is, however, admitted that the said facts of depreciation of property and credit are true to a less extent of the main line of the Louisville and Nashville Railroad between Louisville and Nashville, than of the other railroads in Tennessee; that about the time said settlement was made with the Louisville and Nashville Railroad Company, to wit, on November 8, 1865, the General Assembly of the State of Tennessee, by joint resolution, appointed a joint committee to examine into the condition of the sinking fund; that every holder of bonds of the State of Tennessee, originally issued under the internal improvement laws, including the complainant, so far as he then owned said bonds, and his predecessors in ownership of the bond since acquired by him, accepted the provisions of the Act of November 23, 1865, delivering to the State the overdue and unpaid coupons of said bonds, which had matured from July 1, 1861, to January 1, 1866, and receiving in exchange therefor the said State bonds, authorized thereby; that, after the proceedings and legislation of the State of Tennessee, hereinbefore and in the pleadings set out, including said settlement with the Louisville and Nashville Railroad

Company of November 17, 1865, and the passage of said Act of November 23, 1865, the market price of the bonds of the State of Tennessee, in the City of New York, rose from about fifty cents on the dollar in the month of March in that year to ninety-two cents on the dollar in the month of December in the same year; that many of the railroad companies were unable to provide the means to meet the interest falling due on the 1st of July, 1867, which by law they were bound to provide, and failed to do so to the extent of nearly $800,000, but that the State nevertheless paid the whole amount of interest falling due on that date on its bonds to the holders thereof; that all the holders of the bonds of the State, including the then owners of the bonds now sued on, accepted the provisions of these acts, and funded their overdue coupons, and received payment of current accruing interest after January 1, 1874, to January 1, 1876, in accordance with the terms of the Act of the General Assembly of the State of Tennessee, passed March 17, 1873, and particularly that they registered their bonds, in compliance with the provisions of the ninth section of said act; that in the meantime, on the tenth day of November, 1868, the Governor of the State had informed the General Assembly that six railroads in the hands of receivers were at that time indebted to the State, on interest account due July 1, 1868, one million one hundred and twenty thousand nine hundred and ninety-six dollars and eighty-six cents, and stated that he would have seized two other roads for failure to pay the July interest of that year, and placed them in the hands of receivers, but that he had learned by experience that to do so would only entail increased burdens upon the State treasury, and expressed the opinion that the interest of these roads, as well as that of the State, required that they

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should be sold, and the proceeds thereof applied to the reduction of the State debt. In the same message, he said :

"Leading gentlemen, connected with important railroads largely indebted to the State, are asking for authority to issue second mortgage bonds, with a view of exchanging them for State bonds. Thus purchasing State bonds by the avails of these second mortgage bonds, the debt now due by the State would in like amount be transferred to these railroad companies, and so the State would be relieved of a burden of several millions of dollars of debt now resting upon it. I regard this proposition with approval, and advise its adoption by the Assembly. The payment of large debts now due from the roads alluded to, and the sale of the roads already in the hands of receivers, would reduce the State liabilities at least one-third."

That at the session of the General Assembly in 1871, the Governor, in his message to that body, stated that under said Act of February 25, 1869, as amended by the Act of January 20, 1870, ch. 44, over eight million of dollars in the bonds of the State had been retired and canceled; that other roads had purchased and were then purchasing bonds with which to cancel their liabilities to the State under the said acts ; and in order to prevent further delay on the part of solvent roads that had not retired their indebtedness to the State under said act, recommended that the act be either repealed, to take effect at some future time not remote, or that its provisions be so amended as that the roads be required to pay all accrued interest as well as the sinking fund not theretofore paid in. In the same document, the Governor also stated that but three of the delinquent railroads remained unsold, and added: "It will be a gratifying result when the State is entirely divorced from the railroad system.

And, although the sales will not realize all that was desired, and leave a large debt to be provided for, yet the internal improvement system of Tennessee has added millions to her wealth and diffused such energy and enterprise into every class of society, that no intelligent man can regret the policy which inaugurated the system, notwithstanding a large amount of appropriations made since the war have been improperly expended."

That the several railroad companies to whom loans of internal improvement bonds had been made and the State of Tennessee dealt together under the said acts of February 25, 1869, and of January 20, 1870, according to the terms thereof (except as to settlements made prior to the passage of said acts) the various railroad companies who were able to do so, and who were on that account called insolvent, purchasing in the open market, at the market price, bonds of the State of Tennessee, without discrimination as to their description, or on what account, or to whom issued, and in order to raise the means so to do, the said railroad companies issued their own bonds, secured by mortgages on their railroad property as a first lien thereon, or in accordance with the said acts of 1869 and 1870, and the same were sold in the markets of this country and of Europe, to purchasers for value, to the amount of many millions of dollars, now notwithstanding; and that those railroads known as delinquent railroads, the corporations owning which were not able thus to liquidate their indebtedness to the State, were sold by the authority of the State, by virtue of judicial decree, rendered in a proceeding instituted and prosecuted by the State under and according to the provisions of the act of December 20, 1870, a printed copy of the record of which either party is at liberty to file in said causes, and to use as evidence so far as relevant and competent;

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and the purchasers thereof paid for the same, as by said act and decree they were authorized to do, in any bonds of the State.

That by virtue of said dealings and transactions, and in consequence thereof, the result, in regard to the reduction of the public debt reached, was as follows: The total bonded debt of the State, including $13,782,000 of funding bonds issued under the acts of 1866, 1868 and 1873, amounting to $49,173,316.66. Of this, $29,251,250.00 represented the amounts of internal improvement bonds loaned to railroad companies, but not including the unpaid interest thereon, embraced in any series of funding bonds. The amount of $28,163,016.66 have, under the various acts aforesaid been surrendered and canceled; and of them $16,265,000 were internal improvement bonds loaned to railroad companies, and $4,326,000 were funding bonds under the acts of 1866 and 1868. The account between the State and the two descriptions of railroads, is as follows:

First. Defaulting railroads sold:

Bond issued	$14,628,000.00
Int. funded, 1866	1,122,306.00
Int. unpaid July, 1870	3,331,163.12
U. S. claims assumed	511,560.00
Total	$19,593,029.12
Amount realized by sale	6,698,000.00
Loss to State	$12,895,029.12

Second. Roads which have settled their indebtedness:

Bonds issued	$12,742,000.00
Int. funded January, 1866	1,850,768.00
Sinking fund paid	493,306.00
Unaccounted for	1,255,700.00

the particulars of which are truly stated in Exhibit No. 5 to the answer of John B. Smith, in the *fourth* of said cases; that the whole of these transactions, from and including the settlement between the State and the Louisville and Nsshville Railroad Company, beginning in May, 1865, and the whole progress of this legislation, and of the liquidation, arrangements, and settlements authorized and required by it, and of the dealings between the railroad companies and the State, and of the railroad companies in borrowing money on the security of mortgages on their property, on the faith that all prior liens on account of the loans by the State of internal improvement bonds had been thereby removed and discharged, were public and notorious and the holders of Tennessee State bonds, in the year 1870, formed a voluntary organization, represented by a committee, for consultation and co-operation in matters of common interest, and kept themselves well advised of each step in the history of the business; and on or about May 1, 1870, said bond holders, through their committee, of which J. J. Donaldson, Esq., was chairman, obtained a legal opinion from Hon. Henry E. Davies and Noah Davis, eminent counsel of the City of New York, affirming that they were owners of a lien under the act of 1852, upon each railroad, for the specific payment of the identical bonds issued to that railroad company, by virtue of a contract, protected by the Constitution of the United States; which opinion was printed in pamphlet form, and not otherwise, and circulated among holders of Tennessee State bonds and others. That said bondholders took no action upon said opinion, and their committees ceased to exist in 1873. That in 1877 a similar organization was formed of Tennessee State bondholders, and has been kept up ever since, and that the present suit, and other similar suits now pending, are prosecuted

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in the name of the complainants, by a committee of such organization.

That at no time did the said holders of Tennessee State bonds, or any one of them, including the complainant or those associated and acting with him in the prosecution of this and similar suits, ever make any demand upon any railroad company for the payment of any interest on the said bonds, or receive from any railroad company payment of any coupon, or make any objection to any of the acts of the State of Tennessee, inconsistent therewith, or object to the passage thereof, or oppose any payment, settlement, and liquidation, by any railroad company, of its indebtedness to the State, until in May, 1877, at Memphis, in the Circuit Court of the United States, and in April, 1878, at Washington City, in the Supreme Court, it was contended by pleadings and argument, in the case of *Duncan et al.* v. *Merian et al.*, involving the foreclosure of the Mobile and Ohio Railroad, and the marshaling of liens thereon, on behalf of said committee, that the holders of said State bonds were and are entitled to a prior lien, in accordance with the said opinion of said Judges Davies and Davis; that on the 16th day of January, 1878, there was held, in the City of New York, a meeting of holders of Tennessee State bonds, the call for which was signed by the complainant, and others with whom he was then acting, and with whom he is still associated, and who, jointly with him, are prosecuting this and similar suits—namely, Eugene Kelly, Peter Geddes, John T. Terry, and others—and at which they were present and participating, and at which the following preamble and resolutions were adopted, viz:

"*Whereas*, On the 8th March, 1877, at a meeting between a committee of five members of the Tennessee Legislature (of which Col. John H. Savage was chairman) and a committee of arbitration (of which

George S. Coe was chairman), to whom had been referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders, the debt of the State of Tennessee was fully discussed, with a view of ascertaining and determining what a fair and equitable adjustment of it would be; and,

"*Whereas*, At the conclusion of the conference between the committee of the Tennessee Legislature and the committee of arbiters, the committee made an award that the debt of the State of Tennessee ought to be readjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest, the new bonds to bear interest at six per cent., payable semi-annually, and the coupons for interest to be made receivable for all taxes and dues to the State; and,

"*Whereas*, The session of the Legislature expired by constitutional limitation a few days after the award of the arbiters was rendered, and there was no time to enact a law to give it effect; and,

"*Whereas*, It was very generally understood that an extra session of the Legislature would be convened to accept a proposition from the bondholders to compromise the State debt, on the terms of the award of the committee of arbitration, and to enact a law to fully carry it out, the holders of a very large amount of bonds of Tennessee did make and send to the governor propositions of compromise on the terms of said award, and the governor did thereafter convene the Legislature in extra session, to consider said proposition; and,

"*Whereas*, During the sitting of the Legislature, the intervention of other parties, proposing and advocating before it other and different terms of settlement than those considered by the committees of the Legislature and the committee of arbitration,

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and awarded by the latter committee, and agreed to by the bondholders, was prejudicial to the interests of the State of Tennessee, and to her creditors, in so far as it has delayed a settlement; and,

"*Whereas*, The bondholders of Tennessee had neither an agent nor other person to represent them before the Legislature, but confided in the Legislature, and fully expected that the senators and representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentlemen who had acted as a committee of arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly; therefore,

"*Resolved*, That efforts made by any person who purported to represent the bondholders of Tennessee were entirely unauthorized, and that the declaration alleged to have been made at Nashville, that a settlement could be effected with the bondholders upon a lower basis than that proposed by the committee of arbitrators, of which Mr. George S. Coe is chairman, has no foundation in fact, so far as it relates to the great body of bondholders.

"*Resolved*, That while we deplore the attitude assumed by the Legislature, while assembled at Nashville, in December, toward the bondholders, we believe that it resulted from the influence and unwarrantable interference of other parties than real bondholders, or their representatives.

"*Resolved*, That we have an abiding belief that the people of the great State of Tennessee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them, the effect of which will be to paralyze the prosperity of the State, subvert its best interests, and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors.

"*Resolved*, That the people of Tennessee be urged to adopt such legislation as will uphold the honor of the State, and evince proper regard for the high integrity which has hitherto characterized her citizens.

"*Resolved*, That a committee of five be appointed, consisting of Eugene Kelly, John T. Terry (of E. D. Morgan & Co.), J. G. K. Duer (of James G. King & Son), Peter Geddes (of Geddes & Smith), and Dr. R. S. Moran—Eugene Kelly to be chairman—to take such action as, in their judgment, may be for the interest of the bondholders; but with the understanding that no settlement less favorable than the award of the committee of arbitration be accepted.

And this respondent says that on the 11th day of December, 1877, the complainant, C. Amory Stevens, had addressed, by telegraph, from New York, to the governor of Tennessee, a communication, which was laid before the General Assembly, then in session, as follows:

"NEW YORK, *Dec.* 11, 1877.

"GOVERNOR JAMES D. PORTER:

"I am a large holder of Tennessee bonds, which have been held for years strictly for investment account. I was a signer of the former petition, sent you through the committee of arbitration; and while I would prefer to have that proposition accepted, yet, if it would require a revenue bill that is deemed by the legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and hereby do change it. I propose to take fifty cents on the dollar. I think this dispatch rep-

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resents the sentiments of most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the legislature, through your excellency, to reciprocate this feeling, and make a settlement without further delay.

"Please submit this to the legislature for its action.

"THE ESTATE OF CALVIN STEVENS,
"C. AMORY STEVENS, *Trustee.*"

That the public debt of the State of Tennessee, which was the subject of these communications and propositions, amounted at that time, as reported to the General Assembly by the Governor, in the same message which transmitted the proposition made through the committee of arbitration, to twenty-three millions two hundred and twelve thousand six hundred and six dollars, on the first day of January, 1878, and which consisted partly of bonds issued under the internal improvement acts of 1851, 1852, and the amendments thereto, and those issued for past due interest, and known as funding bonds, and partly of bonds of the State issued for turnpike, capital, and agricultural bureau purposes, and the purchase of the Hermitage.

That on the 21st day of February, 1868, the legislature of the State of Kentucky passed an act entitled "an act to amend the charter of the Louisville and Nashville Railroad Company," approved March 5, 1850, a true copy of which act is annexed to the answer of John B. Smith in the *first* named of said causes.

That on or about the 1st day of April, 1868, the Louisville and Nashville Railroad Company, in pursuance of the authority conferred by said act, which had been duly accepted by it, executed and deliv-

ered by its certain indenture of mortgage of that date, made by and between said company, a duly organized corporation of the State of Kentucky, party of the first part, and James Punnett and Junius B. Alexander, trustees, party of the second part, a true copy of which, except the signatures and acknowledgment, is annexed to the answer of John B. Smith, in the *first* of said causes, as Exhibit No. 4, thereof; that since the execution and delivery thereof, as aforesaid, the said James Punnett, named therein as one of the grantees, has deceased, and this respondent, a citizen of the State of Kentucky, has been duly appointed in his stead, and has accepted said trust, and has been, so far as necessary, acting in execution thereof; that of said eight million loan, authorized and secured by said mortgage, there have been issued and are now outstanding, bonds of said Louisville and Nashville Railroad Company to the amount of seven million and fifty-nine thousand dollars, and, of that amount, two million four hundred and thirty-three thousand dollars were used in the purchase of Tennessee State bonds, for the purpose of paying the State of Tennessee in part the indebtedness claimed to be due from the Memphis and Ohio and the purchase-money of the Memphis, Clarksville and Louisville Railroad Company, and which were so used, in pursuance of the terms and plan, according to which said companies, under the authority of the laws of Kentucky and Tennessee, have become consolidated with or owned by the Louisville and Nashville Railroad Company; that said consolidation and purchase were contemplated, as part of its purposes, by said act of the General Assembly of the Commonwealth of Kentucky, of February 21, 1868, but the same was not consummated until after the passage of said acts of the General Assembly of Tennessee, of 1869–70, heretofore referred to, and

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that the bonds of said Louisville and Nashville Railroad Company, of said eight million loan, secured by said mortgage,, the proceeds of which were used in the purchase of Tennessee State bonds for the purposes aforesaid, were issued and negotiated in the city of New York during the year 1870, and the Tennessee State bonds, purchased therewith, were bought in New York, in open market, at market prices then current, during the period from January 1, 1870, to May 31, 1871; that said deed of trust and mortgage was executed and has been duly registered in accordance with the laws of Kentucky and Tennessee.

That on or about the 1st day of November, 1873, the Louisville and Nashville Railroad Company, a corporation authorized thereto by the laws of Kentucky and Tennessee, executed and delivered its indenture of mortgage of that date to Henry F. Vail, a citizen of the State of New York, and to said John B. Smith, a true copy of which, except the signatures and acknowledgement, is attached to the answer of John B. Smith in the *first* of said causes as Exhibit No. 5, which mortgage was duly registered in the proper offices in the city of Louisville, and in the counties in which said railroad lies; that soon after the execution and delivery of this deed of trust or mortgage, the Louisville and Nashville Railroad Company negotiated, issued, and sold, of the bonds thereby secured, two million of dollars, for full value, but less than par, to purchasers thereof; that the said Louisville and Nashville Railroad Company, having purchased and acquired the title to the railroad and other property of the Memphis, Clarksville and Louisville Railroad Company, and the same having become by said purchase a part of its line and property on the 15th day of July, 1872, by a certain indenture of that date made between the said Louisville and Nash-

ville Railroad Company, a corporation created, organized, and existing by and under the laws of the State of Kentucky, and likewise existing and recognized and possessing chartered rights and privileges by and under the laws of the State of Tennessee, party of the first part, and this respondent, of Louisville, in the State of Kentucky, and Junius B. Alexander, of the city of New York, parties of the second part, a true copy of which, except the signatures and acknowledgement thereof, is attached to the answer of John B. Smith, in the *fourth* case above named, as Exhibit No. *one* thereof; that said mortgage or deed of trust was duly executed by the parties thereto, in conformity with the law of the States of Tennessee and Kentucky in that behalf, and was duly registered and recorded as required thereby; that all said twenty-five hundred bonds of two hundred pounds sterling, with coupons attached, as described in said mortgage, were negotiated and sold, and the proceeds thereof received by the Louisville and Nashville Railroad Company, in the city of London, in England, for full value, but less than par, to purchasers thereof.

That there was delivered to the Memphis, Clarksville and Louisville Railroad Company, on account of their railroad, various internal improvement bonds of the State of Tennessee; that said bonds, to the amount of one million five hundred and eighty-two thousand dollars, were received by or on behalf of the Memphis, Clarksville and Louisville Railroad Company, either through its own officers, or by receivers in possession of its railroad, under appointment of the governor of the State, and were by said company, or by said receivers, negotiated and sold, in pursuance of law, to *bona fide* holders, but none prior to March 18, 1858, and the proceeds of said bonds were applied as directed by the laws under which they were

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issued; that of said sum of one million five hundred and eighty-two thousand dollars of State bonds issued as aforesaid, in aid of the Memphis, Clarksville and Louisville Railroad, the amount of one million and forty-two thousand dollars thereof was issued to said company, in various sums and at different times, between the 17th day of March, 1858, and the 21st day of February, 1861, and all were issued under the provisions of the act of February 11, 1852, and acts amendatory thereof; and that forty thousand dollars of said bonds were issued to said company on March 27, 1866, under the provisions of the act of February 8, 1854, amendatory of said act of February 11, 1852, and four hundred thousand dollars thereof were issued to G. T. Lewis, a receiver in possession of said railroad, by appointment of the governor of the State, between April 14, 1866, and June 13, 1866, as provided in the act of January 18, 1866, to amend said act of February 11, 1852, and one hundred thousand dollars thereof, as authorized by the act of May 24, 1866, to incorporate the Tennessee Pacific Railroad Company, and for other purposes, by the terms of which last mentioned act the governor was authorized to execute a bond for the purchase of railroad machinery, cars, and all other material purchased for the use and benefit of the Memphis, Clarksville and Louisville Railroad from the United States Military Railroad Department at Nashville, of the United States; that the State of Tennessee has failed to pay the interest accruing on its outstanding bonds since the 1st day of July, 1876, having failed to pay the coupons falling due on that day; that the Memphis, Clarksville and Louisville Railroad Company did not pay interest accruing upon its said indebtedness but failed to do so, and to pay the amounts required by the said several laws on account of the sinking fund, and became and was in default by reason

thereof, so that it was claimed by the State that on the 1st day of January, 1871, the said Memphis, Clarksville and Louisville Railroad Company was indebted to the State, on account of said interest in arrear, in the sum of eight hundred and seventy-two thousand one hundred and twenty-five dollars and ninety-two cents, besides four hundred and ninety-nine thousand six hundred and sixty-nine dollars and ninety cents, on account of the purchase of machinery, cars and material from the United States, authorized as aforesaid by the act of May 24, 1866, making the aggregate of indebtedness claimed by the State, of that date, for which said company was liable to it, of two million nine hundred and fifty-three thousand seven hundred and ninety-five dollars and ninety-two cents.

That the bonds authorized by the act of the General Assembly of the State of Tennessee, passed February 1, 1860, and called second mortgage bonds, were issued by said company, and negotiated; that they are the same referred to in the mortgage of the Louisville and Nashville Railroad Company, to the said John B. Smith, and the said Junius B. Alexander, of the 15th day of July, 1872, as having been purchased by the Louisville and Nashville Railroad Company, and by it conveyed to them.

That on the 1st day of June, 1871, the Memphis and Ohio Railroad Company, party of the first part, executed and delivered its certain deed of indenture of that date, to and with John B. Smith, of Louisville, in the State of Kentucky, and James W. Alexander, of the City and State of New York, parties of the second part, a true copy of which is attached to the answer of John B. Smith in the case of the complainant suing upon bonds of the State of Tennessee, issued in aid of the construction of the Memphis and Ohio Railroad, which deed, it is admitted, was duly registered according to the laws of

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the State of Tennessee; that said thirty-five hundred bonds, described in and secured by said deed and mortgage, were duly issued by said railroad company, negotiated and sold to *bona fide* purchasers, for full value, but at less than par, and that the proceeds of the sale of the said bonds, which were indorsed before negotiation by the Louisville and Nashville Railroad Company, were used to replace advances made by the said company for the Memphis and Ohio Railroad Company, and for the purchase of bonds of the State of Tennessee, which the State of Tennessee received in discharge of the indebtedness claimed to be due from said railroad company to it; and, afterward, the Memphis and Ohio Railroad Company was consolidated with the Louisville and Nashville Railroad Company, and the said mortgaged property became vested in the Louisville and Nashville Railroad Company, and that payments of interest accruing on the indebtedness of the Memphis and Ohio Railroad Company claimed to be due to the State of Tennessee, were regularly made by said Louisville and Nashville Railroad Company, then in possession of the Memphis and Ohio Railroad, as lessee thereof, to the State of Tennessee every six months from July, 1867, to July, 1871, each of which semi-annual payments amounted to $71,883.30, and were made partly in cash, and partly in past due bonds and coupons of the State of Tennessee.

That, on the 1st day of July, 1870, the Nashville and Decatur Railroad Company entered into an indenture with Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, then and now citizens of the State of New York, parties of the second part, a true copy of which is filed as "Exhibit No. 2" to the answer of Charles Diggelman and others, in the case of the complainant suing upon bonds of the State of Tennessee, issued in aid of the construction of the Ten-

nessee and Alabama Railroad, which indenture was duly registered in pursuance of the laws of the State of Tennessee; that the Nashville and Decatur Railroad Company is a corporation of the States of Tennessee and Alabama, formed by the consolidation of the Tennessee and Alabama Railroad Company, the Central Southern Railroad Company, and the Tennessee and Alabama Central Railroad Company; that the bonds of the Nashville and Decatur Railroad Company, secured by the said mortgage to said Calhoun, Wilson and Iselin, were issued for the purposes therein authorized, and were negotiated and sold in the City of New York, to *bona fide* purchasers, for full value, but at less than par, and the proceeds thereof used for the purchase of bonds and coupons of the State of Tennessee, bought in open public market in said city, at the prevailing market rates, and which were afterward delivered to and accepted by the State of Tennessee, at par, through its Comptroller, in payment of and satisfaction for the debt claimed to be due the State from the said companies, on account of said internal improvement bonds originally loaned to them; that the respondents, Charles Diggelman, Marius A. Sorchan and Sophie Milius von Willer, purchased and held the amount of bonds stated in their answer, respectively, in good faith and for full value, but at less than par; and that the several respondents, whose names are in the list, marked "Exhibit No. 1," attached to the said answer, each purchased and still holds of said bonds the several amounts set opposite their respective names in said list, in good faith and for full value, but at less than par; a true copy of one of said bonds is set out in "Exhibit No. 2" to said answer. That the Nashville and Decatur Railroad Company made a settlement with the State of Tennessee, through its Comptroller, of its debt claimed to be due to said State on account

of the bonds of said State issued in aid of the construction of the Tennessee and Alabama and the Central Southern Railroad, and the interest thereon, as made up and adjusted to January 1, 1871, in the sum of $2,702,997.10, as is shown by "Exhibit No. 3" to said answer, which is a correct copy of the original, which was paid in bonds and coupons which had been purchased at less than par.

"Exhibit No. 4," attached to the answer, is a true copy of the lease of the Nashville and Decatur Railroad Company to the Louisville and Nashville Railroad Company.

GEORGE HOADLY,
On behalf of Complainants.

STANLEY MATTHEWS,
On behalf of John B. Smith, Charles Diggelman, and others, Defendants.

That the use of the words "*bona fide*" and in good faith, on pages 5, 21, 23 and 24, shall not preclude the complainant from establishing by proof that the holders of the substitution bonds had notice of the rights of the State bondholders, as now claimed by the complainant, when they respectively acquired their interests in the said substitution bonds.